



BOARD OF SUPERVISORS
WORKSHOP
AGENDA

April 14, 2020
4:00 p.m.

1

LOCATION: This meeting will be held **virtually**. Any member of the public interested in participating in the meeting should email the Township at tscheivert@upperuwchlan-pa.gov for a link and a password to join in the meeting. In an effort to minimize public exposure to COVID-19 and maintain social distancing, the meeting will be conducted via webinar. No attendance in-person will be allowed. If you require special accommodation, please call the Township office at 610-458-9400.

I.	Call to Order	Packet Page #
	A. Salute to the Flag	
	B. Moment of Silence	
	C. Inquire if any Attendee plans to audio or video record the Workshop	
	D. An Executive Session was held March 30, 2020 regarding legal matters	
II.	Byers Station Parcel 6C Final PRD Plan ~ Vantage Point Retirement Living	2
	Review and discuss Final Amended PRD Decision and Order Draft, Easement Agreements for consideration at the April 20 Board of Supervisors Meeting	
III.	Profound Technologies	47
	The Board reviewed these standard construction escrow, land development and financial security agreements for Profound Technologies at the March 10, 2020 Workshop. Re-distributed for consideration at the April 20 Board of Supervisors Meeting	
IV.	Zoning Hearing Board Appointment ~ Lauren Cortesi, Member	93
V.	Open Session	
VI.	Adjournment	
VII.	Executive Session re: legal matters	

BUCKLEY, BRION, McGUIRE,
& MORRIS LLP
By: KRISTIN S. CAMP, Esquire
Attorney I.D. # 74593
118 West Market Street, Suite 300
West Chester, Pennsylvania 19382
(610) 436-4400

2

**BEFORE THE BOARD OF SUPERVISORS
OF UPPER UWCHLAN TOWNSHIP, CHESTER COUNTY, PENNSYLVANIA**

**APPLICATION OF VANTAGE POINT RETIREMENT LIVING, INC.
FOR FINAL APPROVAL FOR PARCEL 6C OF THE BYERS STATION PLANNED
RESIDENTIAL DEVELOPMENT**

DECISION AND ORDER

BACKGROUND FACTS

A. In August 1998, Bryn Coed Farms submitted an application to Upper Uwchlan Township (the "Township") for tentative plan approval under Article VII of the Pennsylvania Municipalities Planning Code ("MPC") and the Planned Residential Development regulations that were contained in the Upper Uwchlan Township Zoning Ordinance, adopted as Ordinance No. 97-7, for property situated at the intersection of Route 100 and Byers Road in the Township known as the Byers Station Property.

B. On June 6, 1999, the Township granted tentative PRD approval ("Byers Station Tentative Approval") for development of the Byers Station Property as a planned residential development ("Byers Station PRD" or "PRD"). That document, as well as all exhibits attached thereto, are incorporated by reference as if set forth in full herein.

C. The Byers Station Tentative Approval authorized 40,000 square feet of gross floor area of commercial development on the ground floor and additional square footage on the upper floors of buildings on a part of the Byers Station PRD identified as Parcel 6C.

D. On July 21, 2003, the Township granted final approval for various parcels in the Byers Station PRD (“2003 Approval”). The 2003 Approval did not grant final approval for Parcel 6C which the Board expressly acknowledged in Paragraph 11 of the 2003 Approval. That document, as well as all exhibits attached thereto, are incorporated by reference as if set forth in full herein.

E. On September 8, 2009, the Board of Supervisors (“Board”) modified the 2003 Approval (“2009 Approval”) regarding matters pertaining to development of a property within the PRD known as “The Butler House”, Chester County UPI No. 32-4-496 (the “Butler House Property”). The 2009 Approval did not modify or amend the 2003 Approval as it pertained to Parcel 6C.

F. On January 16, 2018, the Board enacted Ordinance 2018-01 which added a “senior living facility” as a permitted use in a planned residential development.

G. On April 11, 2018, Vantage Point Retirement Living, Inc. (“Vantage Point” or “Applicant”) filed an application to amend the Tentative Approval for Parcel 6C (the “Vantage Point Property”) to permit a senior living facility.

H. On September 16, 2019, the Board granted Amended Tentative Approval for Parcel 6C (the “Parcel 6C Tentative Approval”) to permit a senior living facility (the “Project”), subject to conditions.

I. By correspondence dated December 6, 2019 from Alyson M. Zarro, Esquire, counsel for the Applicant, Vantage Point filed an application for final plan approval for the Project (the “Application”) which included the following documents:

1. Final Planned Residential Development Plan prepared by D. L. Howell and Associates, Inc. dated September 21, 2018 and last revised December 6, 2019;

4

2. Response Letter to the last Gilmore and Associates Review Letter prepared by D. L. Howell and Associates, Inc. dated December 6, 2019;
3. Planning Module Approval Letter from the Pennsylvania Department of Environmental Protection dated November 7, 2019;
4. Completeness Notification Letter pertaining to the NPDES Permit Application from the Chester County Conservation District dated October 29, 2019; and
5. Conceptual Renderings prepared by Kimmel Bogrette dated November 13, 2019 showing two alternatives for the entrance, one with a hip roof and one with a gable roof.

J. The proposed Project is depicted on a plan titled Final Planned Residential Development Plan prepared by D. L. Howell and Associates, Inc. dated September 21, 2018 and last revised February 3, 2020 (the "Final Plan").

K. The Township Planning Commission reviewed the Final Plan at its meeting on February 13, 2020 and recommended that the Board approve the Final Plan.

WHEREFORE, the Board enters the following Order:

ORDER

The Board of Supervisors of Upper Uwchlan Township hereby grants Final Planned Residential Development Approval as set forth in the Application and on the Final Plan, subject to compliance with the following conditions:

1. Except as may be modified by these conditions of Final Plan approval, the Property shall be developed in compliance with the Application and Final Plan, and the Applicant and the development and use of the Vantage Point Property and Project shall comply with the conditions of the Parcel 6C Tentative Approval.

2. The color palate, materials and architecture of the proposed building shall comply with the Conceptual Rendering, Final Version, dated November 13, 2019, 2 sheets, prepared by Kimmel Bogrette, attached hereto as Exhibit "A" and made a part of this Decision. The side and rear elevations of the proposed building shall be substantially similar to the front façade in color, materials and architectural style. The minimum vertical clearance of the porte-cochere shall be fourteen (14) feet.

3. The location, design and size of signs for the Project and the Butler House Property shall comply with the drawing titled Exterior Signage Draft dated 1/8/2020 prepared by Kimmel Bogrette, attached hereto as Exhibit "B" and made a part of this Decision. Prior to issuance of a permit for the signs, Applicant shall demonstrate that the proposed up-lighting of the signs complies with the lighting standards set forth in the Township Zoning Ordinance and Subdivision and Land Development Ordinance.

4. Applicant shall remove from the Township property and the Byers Station Homeowners Association property (if the Applicant can obtain authorization from the Association) the existing utility poles on the existing gravel driveway to the Butler House Property. The poles shall not be cut at grade; the entire pole, including the underground portion, shall be removed.

5. Applicant shall comply with the requirements of Conditions 6, 7 and 8 of the Tentative Approval related to easements and legal authority to re-locate the Butler House driveway to the location shown on the Final Plan; and an easement to utilize the Township property for the new driveway access to the Property from Byers Road and for signs and utilities.

6. Applicant shall design, permit and install the stub, lateral and all necessary infrastructure to service the Property with public sanitary sewer by connecting to the proposed sewer main in Byers Road. Applicant shall also reimburse the Township for the installation of the manhole necessary to service the Property in the event that the Township installs the manhole. These improvements shall be included in the developer's agreement for the Project and financially secured.

7. After the Project is fully occupied and from time to time, the Township may evaluate water usage for the Project to determine if additional sanitary sewer capacity must be purchased by the Applicant. Applicant shall cooperate in providing water usage records to the Township and purchase such additional capacity if warranted.

8. The Applicant, the development of the Property and Project and the Final Plan shall comply with the comments, recommendations and requirements of correspondence of the Township Engineer, Gilmore & Associates, Inc., dated March 13, 2020.

9. The terms of the easements and other agreements required by the conditions of the Parcel 6C Tentative Approval and this Final Approval shall be satisfactory to the Board in form and substance. All easements and agreements shall be recorded contemporaneously with the Final Plan for the Vantage Point Property.

10. Applicant and its successors and assigns in interest to the Property and the Project shall be strictly bound by all of the foregoing conditions of this Final PRD approval.

ADOPTED this _____ day of April 2020.

7

**UPPER UWCHLAN TOWNSHIP
BOARD OF SUPERVISORS**

Sandra M. D'Amico, Chair

ATTEST:

Gwen A. Jonik, Township Secretary

Jamie W. Goncharoff, Vice-Chair

Jennifer F. Baxter, Member

EXHIBIT "A"



 KIMMEL BOGRETTE
Architecture + Sise
© 2019 Kimmel Bogrette Architecture + Sise. All rights reserved.

CHESTER SPRINGS SENIOR LIVING
Conceptual Rendering
November 13, 2019
FINAL VERSION

 VANTAGE POINT
RETIREMENT LIVING, INC.

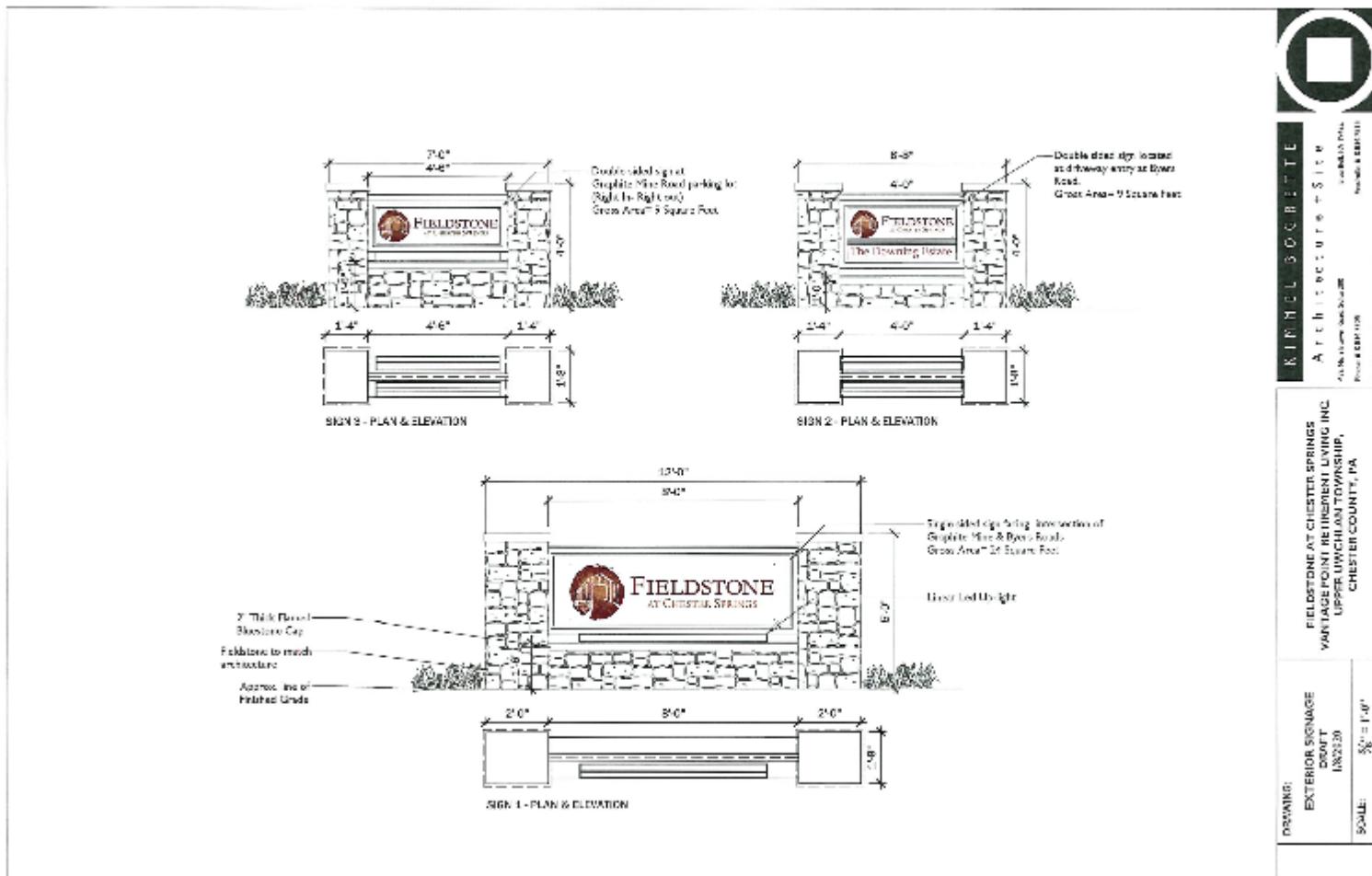


 KIMBEL BOGRETTE
Architecture + S TR
© 2019 Kimbel Bogrette Architecture + S TR. All rights reserved.

CHESTER SPRINGS SENIOR LIVING
Conceptual Rendering
November 15, 2019
FINAL VERSION

VANTAGE POINT
RETIREMENT LIVING, INC.

EXHIBIT "B"



From: Thomas F. Oeste
Sent: Thursday, April 9, 2020
To: Gwen Jonik <GJonik@upperuwchlan-pa.gov>
Cc: Kristin Camp <
Subject: Vantage Point Agreements and Easements

11

Dear Gwen:

Conditions 5 and 9 of the Vantage Point Final PRD decision require easements to provide access to the Vantage Point and the Butler House properties. Attached are 5 agreements that were drafted by Alyson Zarro and revised in accordance with Buckley Brion review comments. Also attached is part of the final plan where the new access will be constructed over the Township property with three areas circled in red, green and yellow that depict three easement areas that will be referred to below. The yellow area is on the Byers Station Homeowners' Association property. No new easement is required for this area because an existing easement authorizes the relocation of the easement to a new location as approved by the Township in the final PRD decision for the Vantage Point property.

1. Agreement to Extinguish Access Easement and to Grant New Access Easement between UUT and EPC, LLC (Mike Robinson). There is an existing easement over the Township spray field property to access the Butler House. This Agreement will extinguish the existing easement and grant a new access easement across the southwest corner of the Township Property. The extinguishment and new easement will be effective when the new driveway is completed by Vantage Point.
2. Access Easement Agreement between EPC, LLC and UUT. This is the new easement referred to in document 1 above. The Township grants a new easement to the Butler House property over the area of the new driveway to be constructed by Vantage Point – the area circled in green. EPC (Butler House) provides insurance and indemnification to the Township.
3. Extinguishment and Termination of Access Easement between UUT and EPC, LLC. This is the other document referred to in document 1 above. This extinguishes the existing Butler House easement when the new access driveway is constructed and open for traffic.
4. Easement Agreement between Eagle Senior Living Partners (Vantage Point) and UUT. This is the green area and a temporary construction easement as shown on the plan. By this easement, UUT is granting to Vantage Point a temporary construction easement to construct the access, utilities etc., and a permanent easement for access, utilities, storm sewer, sanitary sewer, walkway and crosswalk. This easement requires Vantage Point to construct, maintain, repair and replace all facilities, and provides for insurance and indemnification. Paragraph 9.c prohibits encroachment into the Township spray fields. We have submitted this document to Matt Brown for any comments relative to the spray fields.
5. Access Easement Agreement between Eagle Senior Living and EPC LLC. The Township is not a party to this agreement. The agreement grants an easement to the Butler House across the new driveway to be constructed on the Vantage Point property – the area circled in red.

There are two additional agreements between Vantage Point and EPC to extinguish an existing sign easement and grant a new sign easement to Butler House. There are no Township issues related to these documents.

All the documents will be recorded with the Final PRD Plan. The Applicant is completing all the exhibits for the documents. We will do a final review with all exhibits attached prior to the release of the Final Plan for recording.

Tom



Thomas F. Oeste, ESQUIRE
BUCKLEY BRION McGUIRE & MORRIS LLP
118 W. Market Street, Suite 300
West Chester, PA 19382-2928
D: 610.235.0237 | M: 610.436.4400 Ext.1550
F: 610.436.8305
www.buckleyllp.com

PREPARED BY & RETURN TO:

Riley Riper Hollin & Colagreco
Attn.: Alyson M. Zarro, Esquire
717 Constitution Drive, Suite 201
P.O. Box 1265
Exton, PA 19341
610-458-4400

UPI Nos. 32-4-494-E, 32-4-496

13

**AGREEMENT TO EXTINGUISH EXISTING ACCESS EASEMENT AND
TO GRANT NEW ACCESS EASEMENT**

THIS AGREEMENT TO EXTINGUISH EASEMENT AND GRANT NEW EASEMENT (“Agreement”) is made this ____ day of _____, 2020, by and between EPC, LLC, a Pennsylvania limited liability company (“EPC”); and UPPER UWCHLAN TOWNSHIP, a municipal corporation duly organized pursuant to the Pennsylvania Second Class Township Code, 53 P.S. § 65101, *et seq.* (“Township”).

BACKGROUND

A. EPC is the legal owner of a parcel of land located on the north side of Byers Road, Upper Uwchlan Township, Chester County, Pennsylvania, pursuant to a Deed recorded in the Office of the Chester County Recorder of Deeds in Book 7795, Page 1619, which is identified as Chester County UPI No. 32-4-496 and is known as “Lot 261” of the Byers Station Planned Residential Development (“EPC Property”).

B. The Township is the legal owner of a parcel of land located on the north side of Byers Road, and south of the EPC Property, Upper Uwchlan Township, Chester County, Pennsylvania, pursuant to a Deed recorded in the Office of the Chester County Recorder of Deeds in Book 9153, Page 367, which is identified as Chester County UPI No. 32-4-494-E (“Township Property”).

C. In the Deed recorded in Book 9153, Page 367, the predecessor in title to both the EPC Property and the Township Property, Byers Group LLC, reserved unto itself and its successors and assigns of the EPC Property a twenty (20) foot wide non-exclusive access easement over the Township Property, for full, free and uninterrupted ingress, egress and regress to the EPC Property as identified on an Amended Subdivision Plan for Byers Station prepared by Taylor Wiseman and Taylor, which was recorded in the Office of the Chester County Recorder of Deeds in Plan Book No. 17608 (“Existing Access Easement”).

14

D. Eagle Senior Living Partners, LLC d/b/a Fieldstone at Chester Springs (“Fieldstone”) intends to become the legal owner of a property that abuts both the EPC Property and the Township Property which is identified as Chester County UPI No. 32-4-493 and is known as “Lot 258” of the Byers Station Planned Residential Development (“Fieldstone Property”)

E. Fieldstone contemplates the installation of a new access drive (“New Access Drive”) on the Township Property that will provide access to both the EPC Property and the Fieldstone Property, which is shown on a Plan titled “Final Plan for Parcel 6C – Byers Station Planned Residential Development”, Sheet 01 of 17, Site Plan, prepared by D. L. Howell & Associates, Inc. dated 09/21/2018, last revised 04/____/20, which was recorded on _____, 2020 in the Office of the Chester County Recorder of Deeds in Plan Book No. _____, which is attached hereto as Exhibit “A” (“Final Plan”).

F. EPC is prepared to relinquish and extinguish the Existing Access Easement on the Township Property upon the terms and conditions contained herein.

G. The Township is prepared to grant and convey to EPC a new access easement over the New Access Drive on the Township Property upon completion of construction of the New Access Drive in accordance with the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual agreements and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, intending to be legally bound, the parties hereby agree as follows:

1. Incorporation of Background Paragraphs. The foregoing Background Paragraphs are incorporated by this reference as if fully set forth herein.

2. Relinquishment and Extinguishment of the Existing Access Easement and Grant of New Access Easement. The Township Board of Supervisors has approved the location of the New Access Drive as depicted on the Final Plan. Fieldstone intends to complete the construction of the New Access Drive contemporaneously with the development of the Fieldstone Property, which is shown on the Plan. Upon the completion by Fieldstone of the construction of the New Access Drive and all improvements necessary for access to the EPC Property, including those on the Fieldstone Property, the Existing Access Easement and the stone driveway located within it will no longer be utilized for access to the EPC Property. Accordingly, EPC and the Township have executed the Extinguishment and Termination of Access Easement for the Existing Access Easement in the form attached hereto as Exhibit “B” and made a part hereof (“Extinguishment”). Further, EPC and the Township have executed the Grant of Easement for the New Access Drive on the Township Property in the form attached hereto as Exhibit “C” and made a part hereof (“New Easement”). Upon the completion of the New Access Drive by Fieldstone and the opening of the New Access Drive to vehicular traffic, the Extinguishment and New Easement shall take effect (“Effective Date”). Within fifteen (15) days of said Effective Date, the Township shall record the Extinguishment and the New Easement in the Office of the Chester County Recorder of Deeds.

3. Binding Effect. This Agreement shall be legally binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, intending to be legally bound, the parties hereto have executed this Agreement as of the day and year first above written.

16

EPC, LLC,
a Pennsylvania limited liability company

By: _____
Michael Robinson
Title:

Attest: UPPER UWCHLAN TOWNSHIP

By: _____
Name: Sandra M. D'Amico
Title: Chairperson, Board of Supervisors

COMMONWEALTH OF PENNSYLVANIA :
: ss.
COUNTY OF CHESTER :
:

On this, the _____ day of _____, 2020, before me, the undersigned officer, personally appeared Michael Robinson, who acknowledged himself to be the _____ of EPC, LLC, a Pennsylvania limited liability company, and that as such, he being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public
My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA :
: ss.
COUNTY OF CHESTER :
:

On this, the _____ day of _____, 2020, before me, the undersigned officer, personally appeared Sandra D'Amico, who acknowledged herself to be the Chairperson of the Board of Supervisors of Upper Uwchlan Township, and that as such, she being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public
My Commission Expires:

EXHIBIT “A”

Site Plan

EXHIBIT "B"

Extinguishment and Termination of Access Easement

EXHIBIT "C"

Grant of Easement

20

PREPARED BY & RETURN TO:

Alyson M. Zarro, Esquire
RILEY RIPER HOLLIN & COLAGRECO
717 Constitution Drive, Suite 201
P.O. Box 1265
Exton, PA 19341
610-458-4400

UPI Nos. 32-4-494-E, 32-4-496

EXTINGUISHMENT AND TERMINATION OF ACCESS EASEMENT

THIS EXTINGUISHMENT AND TERMINATION OF ACCESS EASEMENT (“Termination”) is made this _____ day of _____, 2020, by and between EPC, LLC, a Pennsylvania limited liability company (“EPC”); and UPPER UWCHLAN TOWNSHIP, a municipal corporation duly organized pursuant to the Pennsylvania Second Class Township Code, 53 P.S. § 65101, *et seq.* (“Township”).

BACKGROUND

A. EPC is the legal owner of a parcel of land located on the north side of Byers Road, Upper Uwchlan Township, Chester County, Pennsylvania, pursuant to a Deed recorded in the Office of the Chester County Recorder of Deeds in Book 7795, Page 1619, which is identified as Chester County UPI No. 32-4-496 and is known as “Lot 261” of the Byers Station Planned Residential Development (“EPC Property”).

B. The Township is the legal owner of a parcel of land also located on the north side of Byers Road, and south of the EPC Property, Upper Uwchlan Township, Chester County, Pennsylvania, pursuant to a Deed recorded in the Office of the Chester County Recorder of Deeds in Book 9153, Page 367, which is identified as UPI No. 32-4-494-E (“Township Property”).

C. In the Deed recorded in Book 9153, Page 367, the predecessor in title to both the EPC and the Township Property, Byers Group LLC, reserved unto itself and its successors and assigns of the EPC Property a twenty (20) foot wide non-exclusive access easement over the Township Property, for full, free and uninterrupted ingress, egress and regress to the EPC Property as identified on an Amended Subdivision Plan for Byers Station prepared by Taylor Wiseman and Taylor, which was recorded in the Office of the Chester County Recorder of Deeds in Plan Book No. 17608 (“Access Easement”).

D. As part of Eagle Senior Living Partners, LLC's development of a property abutting both the EPC Property and the Township Property (the "Fieldstone Property"), Eagle Senior Living Partners, LLC installed a new access driveway on the Township Property, which provides access to the EPC Property and replaces the stone driveway within the Access Easement as depicted on a Plan titled "Final Plan for Parcel 6C – Byers Station Planned Residential Development", Sheet 01 of 17, Site Plan, prepared by D. L. Howell & Associates, Inc. dated 09/21/2018, last revised _____, which was recorded on _____, 2020 in the Office of the Chester County Recorder of Deeds in Plan Book No. _____, which is attached hereto as Exhibit "A ("New Access").

E. Accordingly, EPC and the Township desire to extinguish and terminate the Access Easement.

NOW, THEREFORE, intending to be legally bound, the parties hereby declare as follows:

1. Incorporation of Background Paragraphs. The foregoing Background Paragraphs are incorporated by this reference as if fully set forth herein.

2. Extinguishment and Termination of the Access Easement. EPC and the Township declare that from and after the Effective Date of this Termination as hereinafter defined, the Access Easement shall be extinguished and terminated. EPC hereby releases any and all right, title, claim or interest that was granted in the Access Easement and declares that from and after the Effective Date of this Termination, the Access Easement shall be terminated.

3. Effective Date; Recording. This Termination shall not be effective until recorded by the Township in the Office of Recorder of Deeds of Chester County ("Effective Date"). The Township shall record this Termination upon the completion of the New Access and all improvements necessary for access to the EPC Property, including those on the Fieldstone Property.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, intending to be legally bound, the parties hereto have executed this Termination as of the day and year first above written.

24

EPC, LLC,
a Pennsylvania limited liability company

By: _____
Michael Robinson
Title:

Attest: UPPER UWCHLAN TOWNSHIP

By: _____
Name: Sandra M. D'Amico
Title: Chairperson, Board of Supervisors

COMMONWEALTH OF PENNSYLVANIA :
: ss.
COUNTY OF CHESTER :

On this, the _____ day of _____, 2020, before me, the undersigned officer, personally appeared Michael Robinson, who acknowledged himself to be the _____ of EPC, LLC, a Pennsylvania limited liability company, and that as such, he being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public
My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA :
: ss.
COUNTY OF CHESTER :

On this, the _____ day of _____, 2020, before me, the undersigned officer, personally appeared Sandra D'Amico, who acknowledged herself to be the Chairperson of the Board of Supervisors of Upper Uwchlan Township, and that as such, she being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public
My Commission Expires:

EXHIBIT “A”

Site Plan

PREPARED BY AND RETURN TO:
Attn.: Alyson M. Zarro, Esquire
Riley Riper Hollin & Colagreco
P.O. Box 1265
Exton, PA 19341
(610) 458-4400

UPI Nos. Part of 32-4-493,
Part of 32-4-494-E

27

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (“Agreement”) is made this _____ day of _____, 2020 and is effective this _____ day of _____, 2020, by and between as EAGLE SENIOR LIVING PARTNERS, LLC D/B/A FIELDSTONE AT CHESTER SPRINGS, a Pennsylvania limited liability company, with an address of 707 Eagleview Boulevard, Suite 107, Exton, PA 19341 (“Fieldstone”); and UPPER UWCHLAN TOWNSHIP, 140 Pottstown Pike, Chester Springs, Pennsylvania 19425 (“Township”).

BACKGROUND

A. The Township is the legal owner of a parcel of land located on the north side of Byers Road, Upper Uwchlan Township, Chester County, Pennsylvania, pursuant to a Deed recorded in the Office of the Chester County Recorder of Deeds in Book 9153, Page 367, which is identified as UPI No. 32-4-494-E (“Township Property”).

B. Fieldstone is the legal owner of a parcel of land located at the intersection of Byers Road and Graphite Mine Road, Upper Uwchlan Township, Chester County, Pennsylvania, pursuant to a Deed recorded in the Office of the Chester County Recorder of Deeds in Book _____, Page _____, which is identified as UPI No. 32-4-493 and is known as “Lot 258” of the Byers Station Planned Residential Development (“Fieldstone Property”).

C. Fieldstone received approval to develop the Fieldstone Property with a senior living facility use and related improvements (“Project”) from the Township Board of Supervisors on _____, 2020 (“Senior Living Facility Approval”), which is depicted on a Plan titled “Final Plan for Parcel 6C – Byers Station Planned Residential Development”, Sheet 01 of 17, Site Plan, prepared by D. L. Howell & Associates, Inc. dated 09/21/2018, last revised 04/____/20, which was recorded on _____, 2020 in the Office of the Chester County Recorder of Deeds in Plan Book No. _____, which is attached hereto as Exhibit “A” (“Final Plan”).

D. The Senior Living Facility Approval requires Fieldstone to design, permit and construct various improvements as depicted on the Final Plan, including a new access drive on the Township Property that will provide access to the Fieldstone Property and a parcel of land owned by EPC, LLC located on the north side of Byers Road, Upper Uwchlan Township, Chester County, Pennsylvania, which is identified as Chester County UPI No. 32-4-496 and is known as "Lot 261" of the Byers Station Planned Residential Development ("EPC Property") from Byers Road as shown on Exhibit "A" attached hereto ("Access Drive").

E. Fieldstone has requested that the Township grant and convey to Fieldstone a temporary construction easement on the Township Property for construction of the Access Drive, removal of existing utility poles and wires, installation of a paved walkway and crosswalk, installation of a sanitary sewer lateral with accessories and appurtenances thereto, installation of stormwater management facilities, and grading required in connection with the Project.

F. Fieldstone has requested that the Township grant and convey to Fieldstone a permanent easement for ingress, egress and regress from Byers Road to the Fieldstone Property over the Access Drive and the operation, maintenance, repair and replacement of the Access Drive.

G. Fieldstone has requested that the Township grant and convey to Fieldstone a permanent easement on the Township Property for use and the operation, maintenance, repair and replacement of a paved walkway and crosswalk.

H. Fieldstone has requested that the Township grant and convey to Fieldstone a permanent easement on the Township Property for the use and the operation, maintenance, repair and replacement of a sanitary sewer lateral with accessories and appurtenances thereto serving the Project.

I. Fieldstone has requested that the Township grant and convey to Fieldstone a permanent easement on the Township Property for the use and the operation, maintenance, repair and replacement of stormwater management facilities serving the Project.

J. The Township has agreed to convey to Fieldstone said easements upon the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual agreements and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency which is hereby acknowledged, intending to be legally bound the parties hereby agree as follows:

1. Incorporation of Background Paragraphs. The foregoing Background paragraphs are incorporated herein by this reference as if fully set forth herein.

2. Temporary Construction Easement. The Township hereby grants and conveys to Fieldstone, its successors and assigns, a temporary construction easement on, over, under, across and through the Township Property in the area identified as "Temporary Construction & Grading Easement in favor of UPI # 32-4-493" on Exhibit "A" attached hereto and made a part hereof

and as further described in Exhibit "B" attached hereto and made a part hereof ("Temporary Construction Easement Area"), to enter upon the Township Property and to complete construction of the Access Drive, removal of existing utility poles and wires, installation of a paved walkway and crosswalk, installation of a sanitary sewer lateral with accessories and appurtenances thereto, installation of stormwater management facilities, and all facilities and improvements depicted on the Final Plan and located on the Township Property and grading required in connection with the Project (collectively, the "Improvements"), all such construction to be performed and completed in accordance with all applicable legal requirements, including all Township permits and approvals and Pennsylvania Department of Environmental Protection ("DEP") permits and approvals, at Fieldstone's sole cost and expense ("Temporary Construction Easement").

3. Duration of Temporary Construction Easement. The Temporary Construction Easement shall expire upon the completion of construction of the Improvements for the Project and the final inspection and approval thereof by the Township, DEP, or other governmental authority having jurisdiction over said Improvements.

4. Permanent Access Drive Easement. The Township hereby grants and conveys to Fieldstone, its successors and assigns, a permanent, non-exclusive easement for vehicular and pedestrian ingress, egress and regress over and across the Access Drive for ingress, egress and regress to and between the Fieldstone Property and Byers Road ("Access Drive Easement") in the area identified as "Access & Utility Easement in favor of UPI # 32-4-493" on the Township Property on Exhibit "A" attached hereto and made a part hereof and as more fully described in metes and bounds attached hereto as Exhibit "C" and made a part hereof ("Permanent Easement Area") together with a permanent, non-exclusive easement for the operation, maintenance, repair and replacement of the Access Drive.

5. Use of Access Drive. The rights granted to Fieldstone with respect to the use of any portion of the Access Drive shall be limited to passage of pedestrians and vehicles over the Access Drive to gain access to the Fieldstone Property in connection with the Project only and shall not permit the parking or storage of vehicles or other personal property within the Permanent Easement Area or the Access Drive, which parking or storage of vehicles or personal property is hereby expressly prohibited. Neither the Township nor Fieldstone shall restrict or impede in any way the use of the Access Drive by any lawful user, or permit any person to restrict or impede in any way the use of the Access Drive by any lawful user.

6. Permanent Access Easement over Paved Walkway and Crosswalk. The Township hereby grants and conveys to Fieldstone, its successors and assigns, a permanent, non-exclusive easement for pedestrian ingress, egress and regress over and across the paved walkway and crosswalk as depicted on the Final Plan connecting the Fieldstone Property to an unpaved trail on a property owned by the Byers Station Community Association, Inc. known as "Lot 260" of the Byers Station Planned Residential Development ("Paved Walkway and Crosswalk") coterminous with the final location of the installed paved walkway and crosswalk on the Township Property, the approximate location of which is shown on Exhibit "A" attached hereto and made a part hereof, together with a permanent, non-exclusive easement for the operation, maintenance, repair and replacement of the Paved Walkway and Crosswalk.

7. Permanent Sanitary Sewer Easement. The Township hereby grants and conveys to Fieldstone, its successors and assigns, a permanent, non-exclusive easement on, over, under, across and through the Township Property in the Permanent Easement Area for the installation, operation, maintenance, repair and replacement of an underground sanitary sewer lateral with accessories and appurtenances (“Sanitary Sewer Lateral”) thereto as depicted on the Final Plan serving the Project and connecting to a sewer main in Byers Road owned by the Township. The approximate location of the Sanitary Sewer Lateral is shown on Exhibit “D” attached hereto and made a part hereof.

8. Permanent Stormwater Management Facilities Easement. The Township hereby grants and conveys to Fieldstone, its successors and assigns, a permanent, non-exclusive easement on, over, under, across and through the Township Property in the Permanent Easement Area for the installation, operation, maintenance, repair and replacement of stormwater management facilities serving the Project as depicted on the Final Plan (“Stormwater Management Facilities”) and for the drainage and passage of stormwater through the Stormwater Management Facilities. The approximate location of the Stormwater Management Facilities is shown on Exhibit “D”.

9. Construction and Maintenance Obligations.

- a. Fieldstone shall be responsible for the installation, operation, maintenance, repair and replacement of the Access Drive, Paved Walkway and Crosswalk, Sanitary Sewer Lateral and Stormwater Management Facilities (collectively, the “Permanent Improvements”) in accordance with all applicable laws, rules and regulations of any applicable governmental authority with jurisdiction over the Improvements, at its sole cost and expense. The Stormwater Management Facilities shall also be subject to the operation and maintenance requirements set forth in the Stormwater Best Management Practices and Conveyances Operations and Maintenance Agreement between Fieldstone and the Township for the Project recorded concurrently herewith.
- b. In the event that Fieldstone fails to maintain, repair, or replace the Permanent Improvements in accordance with the terms of this Agreement, the Township shall have the right (but not the obligation) to undertake such maintenance, repair or replacement activities after first giving Fieldstone at least thirty (30) days written notice except in the event of an emergency. If Fieldstone chooses not to undertake said maintenance, repair or replacement activity within said thirty (30) day period, the Township shall have the right (but not the obligation) to undertake such activity and thereafter: (i) collect the cost thereof from Fieldstone by municipal lien against the Fieldstone Property (together with Township’s actual and reasonable engineering, legal and court costs); and/or (ii) collect the cost thereof (together with Township’s actual and reasonable engineering, legal and court costs) from Fieldstone; and/or (iii) pursue any other remedy allowed by law or equity.

c. Fieldstone shall perform and cause each of its contractors, subcontractors and agents to perform all work, activities and operations on or about the Township Property in the exercise of its rights and the performance of its obligations under this Agreement in a good and workmanlike manner, in compliance with all applicable legal requirements and at its sole cost in a manner designed to cause as little interference as possible with the enjoyment of the Township Property by the Township. Fieldstone shall at no time encroach on the existing sanitary sewer disposal areas on the Township Property, the limits of which are identified as "Extent of Spray Irrigation Field" on Exhibit "D" attached hereto and made a part hereof.

10. Insurance. Fieldstone shall obtain and maintain during the entire term of this Agreement one or more public liability and property damage insurance policies covering injury, death or property damage claims arising out of use of the easements set forth herein. Such insurance policies shall provide bodily injury, including death, and property damage coverage in the minimum amount of One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate. Such insurance policies shall be occurrence based and shall name the Township as an additional insured. Any policy of insurance required hereunder shall provide that such policy may not be cancelled without first giving the Township thirty (30) days' prior written notice of cancellation and shall contain a waiver of subrogation clause *vis-à-vis* the Township. Fieldstone's insurance shall be primary and non-contributory to insurance coverage maintained by the Township. Prior to commencement of construction, Fieldstone shall provide to the Township a certificate of insurance evidencing the required coverage and, following completion of construction, certificates of insurance upon request.

11. Indemnification. Fieldstone shall indemnify, defend and hold harmless the Township, its successors and assigns, from and against all liabilities, losses, claims, costs, actions, suits, damages, fines, penalties, expenses or demands (including but not limited to, reasonable counsel fees incurred in such actions and for enforcing this indemnity) (collectively, "Claims") arising out of or caused by the acts or omissions of Fieldstone, or its successors, assigns, agents, employees, officers, directors, partners, members, invitees, contractors or subcontractors in connection with the easements herein conveyed, including without limitation property, personal injury or utility damage. Fieldstone's duty to indemnify, defend and hold harmless the Township, its successors and assigns, shall not apply to the extent Claims arise, in whole or in part, from the gross negligence or willful misconduct of the Township.

12. Notice. All notices or other communications made pursuant to this Agreement shall be in writing and shall be deemed properly delivered, given or served if: (a) hand delivered against receipt, (b) mailed registered or certified mail, postage prepaid, return receipt requested, or (c) sent by nationally recognized overnight carrier to the address stated hereinabove, or to such other address as the addressee may have specified in a written notice duly given to the sender as provided herein. All notices shall be deemed received: (a) if hand delivered against receipt or by certified mail, on the day of such delivery, and (b) if sent by nationally recognized overnight carrier, one business day after it is sent.

13. Amendment. The parties agree that this Agreement cannot be amended, modified or terminated except by written amendment signed by all of the parties and recorded in the Office of the Recorder of Deeds of Chester County, Pennsylvania..

14. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto, and shall run with the land.

15. Miscellaneous. This Agreement may be executed in counterparts which, in aggregate, shall constitute one original agreement. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to choice of law principles.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, intending to be legally bound, the parties hereto have executed this Agreement as of the day and year first above written.

Attest:

UPPER UWCHLAN TOWNSHIP

By: _____

Name:

Title:

By: _____

Sandra M. D'Amico

Chairperson, Board of Supervisors

EAGLE SENIOR LIVING PARTNERS, LLC
D/B/A FIELDSTONE AT CHESTER SPRINGS, a
Pennsylvania limited liability company

By: _____

Gregory Stevens

Title:

COMMONWEALTH OF PENNSYLVANIA :
: : ss.
COUNTY OF CHESTER :
:

On this, the _____ day of _____, 2020, before me, the undersigned officer, personally appeared Gregory Stevens, who acknowledged himself to be the _____ of Eagle Senior Living Partners, LLC a/b/a Fieldstone at Chester Springs, a Pennsylvania limited liability company, and that as such, he being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the limited liability company as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public
My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA :
: : ss.
COUNTY OF CHESTER :
:

On this, the _____ day of _____, 2020, before me, the undersigned officer, personally appeared Sandra D'Amico, who acknowledged herself to be the Chairperson of the Board of Supervisors of Upper Uwchlan Township, and that as such, she being authorized to do so, executed the foregoing instrument for the purposes therein as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public
My Commission Expires:

EXHIBIT "A"

Site Plan

EXHIBIT "B"

36

Legal Description of Temporary Construction Easement Area

TEMPORARY CONSTRUCTION & GRADING EASEMENT OVER UPI #32-4-494(E)
In Favor Of
UPI #32-4-493

All that certain easement situate in the Township of Upper Uwchlan, County of Chester, Commonwealth of Pennsylvania, as shown on plan entitled "Site Plan – Final Plan for Parcel 6C – Byers Station Planned Residential Development – Vantage Point Retirement Living" dated 09/21/2018, last revised 04/____/2020, prepared for Vantage Point Retirement Living, Inc., by DL Howell & Associates, Inc., Civil Engineers, West Chester, PA, and to be recorded in the office of the Recorder Of Deeds in and for the County of Chester as Plan # _____, being more particularly described as follows:

Beginning at a point on the northerly right-of-way line of Byers Road (SR 1022) (Variable Width) at its intersection with the dividing line between lands now or late of Upper Uwchlan Township (UPI #32-4-494(E), and lands now or late of Gunner Properties, Ltd. (UPI #32-4-493), as shown on said plan; thence from said **Point of Beginning**, running along said dividing line, North 13°35'05" West, 392.89 feet to a point; thence, running through said lands of Upper Uwchlan Township the following six (6) courses and distances: 1) North 88°57'28" East, 22.54 feet to a point; 2) South 13°36'56" East, 145.62 feet to a point; 3) South 44°30'39" East, 87.95 feet to a point; 4) South 5°36'38" East, 108.87 feet to a point; 5) South 36°44'27" East, 26.40 feet to a point; and 6) South 15°45'19" East, 39.06 feet to a point on said northerly right-of-way line of Byers Road; thence, along the same, South 80°09'47" West, 64.17 feet to the **Point and Place of Beginning**.

Containing: 16,803 Square Feet of Land, be the same more or less.

Being: "Temp. Construction and Grading Easement in favor of UPI #32-4-493" as shown on said plan.

Subject to: Any easements or encumbrances as may appear of record.

EXHIBIT "C"

37

Legal Description of Permanent Easement Area

ACCESS & UTILITY EASEMENT OVER UPI #32-4-494(E)
In Favor Of
UPI #32-4-493

All that certain easement situate in the Township of Upper Uwchlan, County of Chester, Commonwealth of Pennsylvania, as shown on plan entitled "Site Plan – Final Plan for Parcel 6C – Byers Station Planned Residential Development – Vantage Point Retirement Living" dated 09/21/2018, last revised 04/____/2020, prepared for Vantage Point Retirement Living, Inc., by DL Howell & Associates, Inc., Civil Engineers, West Chester, PA, and to be recorded in the office of the Recorder Of Deeds in and for the County of Chester as Plan # _____, being more particularly described as follows:

Beginning at a point on the northerly right-of-way line of Byers Road (SR 1022) (Variable Width) at its intersection with the dividing line between lands now or late of Upper Uwchlan Township (UPI #32-4-494(E), and lands now or late of Gunner Properties, Ltd. (UPI #32-4-493), as shown on said plan; thence from said **Point of Beginning**, running along said dividing line, North 13°35'05" West, 237.42 feet to a point; thence, running through said lands of Upper Uwchlan Township the following six (6) courses and distances: 1) North 76°24'55" East, 2.46 feet to a point of non-tangent curve; 2) along said curve to the left, having a radius of 295.00 feet, an arc length of 75.17 feet, through a central angle of 14°36'00" and whose chord bears South 29°00'46" East, 74.97 feet to a point of tangency; 3) South 36°18'45" East, 25.87 feet to a point of curvature; 4) along said curve to the right, having a radius of 153.00 feet, an arc length of 80.53 feet, through a central angle of 30°09'29" and whose chord bears South 21°14'01" East, 79.61 feet to a point of tangency; 5) South 6°09'17" East, 35.42 feet to a point of curvature; and 6) along said curve to the left, having a radius of 32.00 feet, an arc length of 35.47 feet, through an angle of 63°30'42", and whose chord bears South 37°54'38" East, 33.68 feet to a point of non-tangency on said northerly right-of-way line of Byers Road; thence, along the same, South 80°09'47" West, 52.40 feet to the **Point and Place of Beginning**.

Containing: 7,311 Square Feet of Land, be the same more or less.

Being: "Access & Utility Easement in favor of UPI #32-4-493" as shown on said plan.

Subject to: Any easements or encumbrances as may appear of record.

EXHIBIT “D”

Grading & Utilities Plan

PREPARED BY AND RETURN TO:

Attn.: Alyson M. Zarro, Esquire
Riley Riper Hollin & Colagreco
P.O. Box 1265
Exton, PA 19341
(610) 458-4400

UPI Nos. Part of 32-4-493,
Part of 32-4-496

ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT (“Agreement”) is made this ____ day of _____, 2020 and is effective this ____ day of _____, 20____, by and between as EPC, LLC, a Pennsylvania limited liability company, with an address of 165 Byers Road, Chester Springs, Pennsylvania 19425 (“EPC”) and Eagle Senior Living Partners, LLC d/b/a Fieldstone at Chester Springs with an address of 707 Eagleview Boulevard, Suite 107, Exton, PA 19341 (“Fieldstone”).

BACKGROUND

A. EPC is the legal owner of a parcel of land located on the north side of Byers Road, Upper Uwchlan Township, Chester County, Pennsylvania, pursuant to a Deed recorded in the Office of the Chester County Recorder of Deeds in Book 7795, Page 1619, which is identified as Chester County UPI No. 32-4-496 and is known as “Lot 261” of the Byers Station Planned Residential Development (“EPC Property”).

B. Fieldstone is the legal owner of a parcel of land located at the intersection of Byers Road and Graphite Mine Road, Upper Uwchlan Township, Chester County, Pennsylvania, pursuant to a Deed recorded in the Office of the Chester County Recorder of Deeds in Book _____, Page _____, which is identified as UPI No. 32-4-493 and is known as “Lot 258” of the Byers Station Planned Residential Development (“Fieldstone Property”).

C. Fieldstone has constructed a senior living facility and related improvements on the Fieldstone Property, including a new access drive on the Fieldstone Property that provides access to the Fieldstone Property and the EPC Property from Byers Road, which is shown on Exhibit “A” attached hereto (“Access Drive”).

D. In order for EPC to access the EPC Property, EPC has requested that Fieldstone grant and convey to EPC an easement for ingress, egress and regress from Byers Road to the

EPC Property over the Access Drive. Fieldstone has agreed to convey to EPC said easement upon the terms and conditions contained herein.

40

NOW, THEREFORE, in consideration of the mutual agreements and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency which is hereby acknowledged, intending to be legally bound the parties hereby agree as follows:

1. Incorporation of Background Paragraphs. The foregoing Background paragraphs are incorporated herein by this reference as if fully set forth herein.

2. Access Easement. Fieldstone hereby grants and conveys to EPC, its successors and assigns, a permanent, non-exclusive easement for vehicular and pedestrian ingress, egress and regress over and across the Access Drive for ingress, egress and regress to and between the EPC Property and Byers Road in the area identified as "Fieldstone Access Drive Easement" on the Fieldstone Property on Exhibit "A" attached hereto and made a part hereof and as more fully described in metes and bounds attached hereto as Exhibit "B" and made a part hereof ("Access Drive Easement Area").

3. Use of Access Drive. The rights granted to EPC with respect to the use of any portion of the Access Drive Easement Area shall be limited to passage of pedestrians and vehicles over the Access Drive to gain access to the EPC Property and shall not permit the parking or storage of vehicles or other personal property within the Access Drive Easement Area or the Access Drive, which parking or storage of vehicles or personal property is hereby expressly prohibited. Neither EPC or Fieldstone shall restrict or impede in any way the use of the Access Drive by any lawful user, or permit any person to restrict or impede in any way the use of the Access Drive by any lawful user.

4. Liability; Insurance. EPC shall be responsible for any injury or damage suffered by an invitee or other person using the Access Drive or within the Access Drive Easement Area for the purposes of gaining access to the EPC Property. If EPC, or its invitees, commits a negligent act or omission which causes damage to the Access Drive necessitating repairs or improvements, EPC shall be solely responsible for making such repairs at its sole cost and expense. EPC shall obtain an industry standard commercial general liability insurance policy in a commercially reasonable amount. Such policy shall name Fieldstone as an additional insured. Such insurance shall be maintained for so long as the Access Easement remains in effect.

5. Indemnification. EPC shall indemnify, defend and hold harmless Fieldstone, its successors and assigns, from and against all liabilities, losses, claims, costs, actions, suits, damages, fines, penalties, expenses or demands (including but not limited to, reasonable counsel fees incurred in such actions and for enforcing this indemnity) (collectively, "Claims") arising out of or caused by the acts or omissions of EPC, or its successors, assigns, agents, employees, officers, directors, partners, members, invitees, contractors or subcontractors in connection with the Access Easement conveyed, including without limitation property, personal injury or utility damage. EPC's duty to indemnify, defend and hold harmless Fieldstone, its successors and assigns, shall not apply to the extent Claims arise, in whole or in part, from the negligence or willful misconduct of Fieldstone.

6. Notice. All notices or other communications made pursuant to this Agreement shall be in writing and shall be deemed properly delivered, given or served if: (a) hand delivered against receipt, (b) mailed registered or certified mail, postage prepaid, return receipt requested, or (c) sent by nationally recognized overnight carrier to the address stated hereinabove, or to such other address as the addressee may have specified in a written notice duly given to the sender as provided herein. All notices shall be deemed received: (a) if hand delivered against receipt, on the day of such delivery, and (b) if sent by nationally recognized overnight carrier, one business day after it is sent.

7. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto, and shall run with the land.

8. Amendment. The parties agree that this Agreement cannot be amended, modified or terminated except by written amendment signed by all of the parties hereto and recorded in the Office of the Recorder of Deeds of Chester County, Pennsylvania.

9. Miscellaneous. This Access Easement Agreement may be executed in counterparts which, in aggregate, shall constitute one original agreement. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to choice of law principles.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, intending to be legally bound, the parties hereto have executed this Agreement as of the day and year first above written.

EAGLE SENIOR LIVING PARTNERS, LLC
D/B/A FIELDSTONE AT CHESTER SPRINGS, a
Pennsylvania limited liability company

By: _____
Gregory Stevens
Title:

EPC, LLC,
a Pennsylvania limited liability company

By: _____
Michael Robinson
Title:

COMMONWEALTH OF PENNSYLVANIA :
: ss.
COUNTY OF CHESTER :

On this, the _____ day of _____, 2020, before me, the undersigned officer, personally appeared Gregory Stevens, who acknowledged himself to be the _____ of EAGLE SENIOR LIVING PARTNERS, LLC D/B/A FIELDSTONE AT CHESTER SPRINGS, a Pennsylvania limited liability company, and that as such, he being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public
My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA :
: ss.
COUNTY OF CHESTER :

On this, the _____ day of _____, 2020, before me, the undersigned officer, personally appeared Michael Robinson, who acknowledged himself to be the _____ of EPC, LLC, a Pennsylvania limited liability company, and that as such, he being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public
My Commission Expires:

EXHIBIT “A”

EXHIBIT “B”

ENDER OF GRAPHITE MINE ROAD & BYERS ROAD, CHESTER

OK 9254, PAGE 214

#258, RECORD PLAN BOOK #17608)

PHYSICAL IMPROVEMENTS SHOWN ARE FROM FIELD SURVEYING, LLC. PERFORMED ON AUGUST 24, 2017.

D RUN TOPOGRAPHIC SURVEY BY HOWELL KLINE
D 88 (COMPUTED USING GEOD12A) & NAD 83 (2011)
MINED BY GPS OBSERVATION, SITE BENCH = TOP GRATE
APPROXIMATELY 20' S.W. OF SOUTH EASTERN PROPERTY
CONTOUR INTERVAL: 2 FEET

WERE PLOTTED FROM OBSERVABLE EVIDENCE AT THE
TION FROM PLANS SUPPLIED BY UTILITY COMPANIES. NO

SHAWN HERON.

9. THIS PROPERTY IS LOCATED WITHIN FLOOD HAZARD ZONE X, AN AREA DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOOD PLAIN AS PER THE NATIONAL FLOOD INSURANCE RATE MAP FOR CHESTER COUNTY, PA. MAP NO. 42029C0095F, PANEL 95 OF 380, DATED SEPTEMBER 28, 2008.
10. THERE WAS NO OBSERVED EVIDENCE OF SEWER OR WATER ON THE SURVEYED PREMISES.
11. THERE WAS NO OBSERVED EVIDENCE OF GAS SERVICE ON THE SURVEYED PREMISES.
12. SOILS INFORMATION PROVIDED WITH SUPPORT FROM THE NATURAL RESOURCES CONSERVATION SERVICE. SOILS ATTRIBUTE DATA IS SERVED FROM THE NRCS SOIL DATA MART.
13. ALL BUILDING MATERIALS AND WASTES MUST BE REMOVED FROM THE SITE AND RECYCLED OR REUSED IN ACCORDANCE WITH THE DEPARTMENT OF ENVIRONMENTAL PROTECTION'S SOLID WASTE MANAGEMENT REGULATIONS AT 25 PA. CODE 260.1 ET SEQ., 271.1 ET SEQ. AND 287.1 ET SEQ. NO BUILDING MATERIAL SHALL BE LEFT, DUMPED OR DISCHARGED FROM THE SITE.
14. UPPER UWCHLAN TOWNSHIP SHALL HAVE THE RIGHT, BUT NOT THE OBLIGATION, THROUGH A BLANKET EASEMENT TO ENTER THE PROPERTY FOR ACCESS TO THE PROPOSED BMP'S FOR INSPECTION AND/OR MENTIONED PURPOSES.
15. DISCREPANCIES WITH THE OPERATION AND MAINTENANCE PLAN SHALL BE PROVIDED TO UPPER UWCHLAN TOWNSHIP.
16. ALL SANITARY SEWERS MUST BE CONSTRUCTED IN ACCORDANCE WITH THE UPPER UWCHLAN TOWNSHIP MUNICIPAL AUTHORITY SPECIFICATIONS.
17. THE AUTHORITY ENGINEER MUST BE NOTIFIED 48 HOURS PRIOR TO THE BEGINNING OF SANITARY SEWER CONSTRUCTION.
18. AN AS-BUILT PLAN MUST BE SUBMITTED TO THE AUTHORITY ENGINEER.

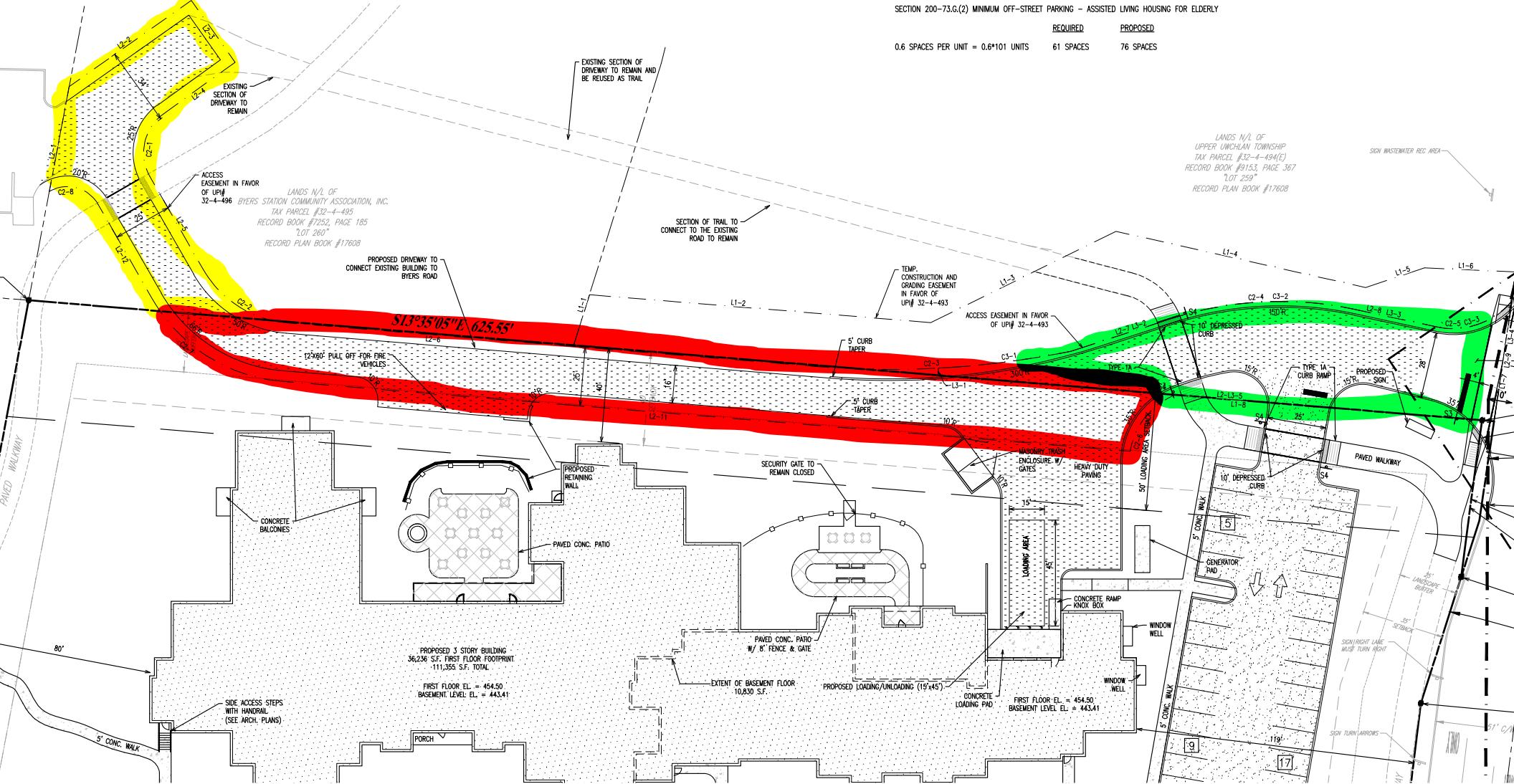
REFERENCE PLAN

1. PLAN ENTITLED, "AMENDED SUBDIVISION PLAN FOR BYERS STATION-PHASE 1", PREPARED BY TAYLOR WISEMAN & TAYLOR, DATED APRIL 28, 2005, RECORD PLAN BOOK #17608.

REQUIRED	
EDU'S	GPD
45	10,000

UPPER UWCHLAN TOWNSHIP RESERVES THE RIGHT TO EVALUATE WATER USAGE AFTER THE BUILDING IS OPENED AND REQUIRE VANTAGE POINT RETIREMENT LIVING, INC. TO PURCHASE ADDITIONAL CAPACITY, IF NEE

46



LAND DEVELOPMENT AGREEMENT

PROFOUND TECHNOLOGIES - 125 LITTLE CONESTOGA ROAD

THIS LAND DEVELOPMENT AGREEMENT (together with all modifications and amendments, the “Agreement”) made this _____ day of _____, 20____, by **UPPER UWCHLAN TOWNSHIP**, Chester County, Pennsylvania, a second class Township, with offices at 140 Pottstown Pike, Chester Springs, Pennsylvania 19425 (the “Township”) and **RIP HOLDINGS, LLC**, a Pennsylvania limited liability company with an address of 125 Little Conestoga Road, Chester Springs, Pennsylvania 19425 (“Developer”).

BACKGROUND:

- A. Developer proposes to develop a 1.184 acre piece of property, known as Chester County Tax Parcel No. 32-4-38.3 situate at 125 Little Conestoga Road, Upper Uwchlan Township, Chester County, Pennsylvania, in accordance with a proposed subdivision and/or land development known as “125 Little Conestoga Road” (“Development”).
- B. The Upper Uwchlan Township Board of Supervisors (the “Board”) granted final land development approval of the Development on November 18, 2019. Developer received final approval of the land development plans for the Development, subject to, among other things entering into a Financial Security Agreement and this Agreement, and posting the Financial Security, as hereinafter defined, to complete the Secured Improvements, as hereinafter defined.
- C. The parties desire to set forth their agreement and understanding with respect to the foregoing and such other matters as hereinbelow set forth.

NOW, THEREFORE, the parties hereunto, in consideration of the premises and the mutual promises herein contained and intending to be legally bound hereby, agree as follows:

1. Definitions; Interpretation.

- A. For purposes of this Agreement, except where the context clearly indicates otherwise, the following words and phrases (including the singular and plural forms thereof) shall have the following meanings:
 - (1) “Tract” shall mean all that certain 1.184 acre tract located at 125 Little Conestoga Road, Upper Uwchlan Township, Chester County, Pennsylvania, Chester and which is more fully and further shown and described on the Plans.

(2) “Plans” shall mean the land development plan entitled “Preliminary/Final Land Development Plan of 125 Little Conestoga Road” prepared by D.L. Howell & Associates, Inc., dated November 9, 2018, last revised _____, 2020, consisting of fourteen (14) sheets that are specifically numbered, entitled, dated, and last revised as set forth on Exhibit “A” attached hereto and made fully part hereof, including, without limitation, all notes, statements and other information appearing on the plans, and all reports, narratives, studies, profiles, delineations and other materials of whatever nature or kind accompanying or related to the plans.

(3) “Subject Land Development” or “Project” shall mean the proposed land development of the Tract as an addition to the existing commercial building, together with such other Improvements, as hereinafter defined, proposed or required in, on and/or related to the Subject Land Development, as the same are more fully depicted on the Plans.

(4) “Improvements” shall mean all those walkways, curbs, gutters, street lights, fire hydrants, shade trees, sanitary sewers, storm drains and sewers, storm water detention and/or retention basins and other related drainage facilities, recreational facilities, open space improvements, buffer or screen plantings, and/or other improvements or common amenities, as the same are more fully shown, identified or otherwise described on and by the Plans.

(5) “Secured Improvements” shall mean all those Improvements for which the Financial Security is provided or to which the Financial Security otherwise relates, as set forth on Exhibit “B”.

(6) “Completion Date” shall mean the date specified in Section 2.D of this Agreement on or before which the Improvements shall be completed.

(7) “Financial Security” shall mean the financial security provided under and in accordance with the provisions of Section 3 of this Agreement and the provisions of the Financial Security Agreement (including any additional financial security made part thereof, any increases and other adjustments thereto, and any financial security substituted therefor) and the funds representative thereof and therein.

(8) “Financial Institution” shall mean the bonding company or lending institution chosen by Developer with which the Financial Security has been posted or established and/or which issues the Financial

Security to the Township. The Financial Institution must be a bonding company or Federal or Commonwealth chartered lending institution which is authorized to conduct business in the Commonwealth of Pennsylvania.

- (9) "Financial Security Agreement" shall mean that certain Financial Security Agreement, of even date herewith, by and between the Township and Developer, which agreement is fully incorporated into and made part of this Agreement.
- (10) "Subdivision and Land Development Ordinance" shall mean the Upper Uwchlan Township Subdivision and Land Development Ordinance, as such Ordinance has been amended and now exists and as hereafter may be amended, provided that the application of subsequent amendments to the Subject Land Development shall be subject to the provisions of Section 508(4) of the MPC.
- (11) "MPC" shall mean the Pennsylvania Municipalities Planning Code, Act No. 247 of 1968, *as reenacted and amended*, 53 P.S. § 10101 *et seq.*, as the same now exists and hereafter may be further amended.
- (12) "Township Engineer" shall mean the professional engineer, licensed as such in the Commonwealth of Pennsylvania, duly appointed and employed as the engineer for the Township or engaged by the Township as a consultant thereto.

- B. Except as may be otherwise provided herein and/or if the context clearly indicates otherwise, all words and phrases appearing in this Agreement, which also appear in the Subdivision and Land Development Ordinance or the MPC, shall have the meanings and shall be interpreted herein as under the Subdivision and Land Development Ordinance or the MPC.

2. **Construction and Completion of Improvements.**

- A. Developer, at its sole expense, shall layout, construct, install, and/or otherwise complete the Secured Improvements in a good and workmanlike manner, in full and strict accordance with and pursuant to the following: (i) the Subdivision and Land Development Ordinance; (ii) the Plans; (iii) the provisions of this Agreement; (iv) all applicable requirements of electric, telephone, and other utility companies having jurisdiction; and (v) all other applicable laws, statutes, ordinances, resolutions, rules, and regulations of the Township and of other applicable or appropriate governmental authorities and/or agencies having jurisdiction. In the event of any inconsistency or conflict between or among the provisions of any of

the foregoing, those provisions contained in the Plans shall prevail and control.

50

B. No Improvements referred to herein, in connection with this Project shall be commenced until:

- (1) The Plans are recorded according to law;
- (2) This Agreement is duly signed and delivered;
- (3) Financial security as defined in Section 509 of the MPC and in this Agreement is delivered to the Township and Developer and the Financial Institution have executed the Financial Security Agreement; and
- (4) All fees (i) required by any Ordinance, Resolution or regulation of the Township and (ii) legal and engineering expenses, incurred by the Township for the completion of its approval of the Plans, preparation of the Agreements, Resolutions and other papers relating to the acceptance of this Agreement by the Township are paid.

C. Upon compliance with the requirements of subsection B, above, Developer may obtain permits for the building addition which constitutes the Project.

D. The Secured Improvements shall be completed on or before the date occurring one (1) year from the date of this Agreement. Upon written request of Developer and approval of the Township the Completion Date may be extended from time to time, provided that (i) Developer's written request is received by the Board of Supervisors not less than twenty (20) days prior to the then-current completion date, and (ii) the Financial Security is also extended so that it continues valid and effective for all purposes thereof to a date occurring at least sixty (60) days after the extended completion date. Such times shall be of the essence.

E. Developer shall be solely responsible, at its sole cost and expense, for the repair and maintenance of all Secured Improvements during and after construction thereof. For purposes of this subsection, "repair and maintenance of all Secured Improvements" shall mean, without limitation, keeping the Secured Improvements at all times in such condition that the structural integrity and functioning of the same shall be maintained in accordance with the design and specifications thereof as shown on the Plans.

F. In the event that Developer is in default of any of its repair and maintenance obligations under Subsection E, the Township, shall have the

right, but not the obligation, and provided the Developer is first given written notice by the Township specifying the failure of repair or maintenance and opportunity to cure said default pursuant to Section 5.A(8) of the Financial Security Agreement, (which right shall be in addition to such other or further rights and remedies as may be available to the Township under this Agreement, the Financial Security Agreement, the Subdivision and Land Development Ordinance, and/or the MPC, and/or otherwise at law or in equity) to:

- (1) Enter upon the Tract and satisfy any of such defaulted repair and maintenance obligation of Developer (provided that any such entry and/or satisfaction shall not be deemed, in any manner or to any extent whatsoever, as an acceptance by the Township of the dedication, transfer or other assignment of the Improvements subject of the default, and/or as imposing any responsibility upon the Township for the completion, further repair and maintenance, or otherwise, with respect to the Improvements subject of the default); and
- (2) In order to pay for the costs, expenses and/or fees incurred by the Township related to the satisfaction of such defaulted obligations, (i) obtain payment to the Township, or its order, of all or any part of the Financial Security for such costs, expenses and fees (notwithstanding that the amount of the Financial Security, but for this Paragraph, is not now or hereafter specifically established to guarantee or otherwise cover the payment of such costs, expenses and/or fees); and/or (ii) institute and prosecute appropriate legal and/or equitable actions or proceedings against Developer to recover such costs, expenses and/or fees, together with attorney fees and costs incurred by the Township for and otherwise related to any such legal and/or equitable action or proceeding.

G. It shall be the obligation of Developer to arrange in advance with the Township for inspection of the work as the work progresses and the cost of such inspection shall be paid by Developer.

H. Developer agrees that it will obtain use and occupancy permits as required under the Township's Zoning Ordinance prior to permitting occupancy of the building addition within the Project.

I. Developer agrees to maintain such barricades, warning lights or fences as are necessary during the course of construction to give reasonable protection to the public.

3. **Guaranty of Completion of Secured Improvements.**

- A. Developer shall deposit with the Township or otherwise establish the Financial Security all in accordance with and pursuant to the terms and conditions of this Section 3 and the Financial Security Agreement. Unless and until the Financial Security is so deposited or otherwise established by Developer, no building or occupancy permit, relating to the erection, placement or occupancy of any of any building addition or other structures in, on and/or related to the Subject Land Development, shall be issued by the Township.
- B. The Financial Security shall provide for and secure to the public, as represented by the Township, the completion, on or before the Completion Date, of the Secured Improvements in accordance with and pursuant to the Financial Security Agreement. The Financial Security shall be of such type as more fully and further provided in and by the Financial Security Agreement.
- C. The initial amount of the Financial Security shall be Two Hundred Ten Thousand Nine Hundred Four and 93/100 Dollars (\$210,904.93), which is 110% of the total cost estimate as set forth in Exhibit "B" attached hereto and made fully part hereof. The amount of the Financial Security shall be subject to such increase, adjustment and reduction as provided in and by the Financial Security Agreement.

4. **Failure to Complete; Other Default.**

- A. In the event that any of the Secured Improvements is or are not completed in accordance with the terms, conditions and requirements of Section 2 above, the Township shall have the right, but not the obligation, (which right shall be in addition to such other or further rights and remedies, as may be available to the Township under this Agreement, the Financial Security Agreement, and/or the MPC, and/or otherwise at law or in equity) to: (i) enter upon the Tract and complete all or part of the Improvements in accordance with the terms, conditions and requirements of Section 2; and (ii) with respect to incomplete Secured Improvements, obtain payment to it, or its order, of all or any part of the Financial Security and/or to otherwise enforce the Financial Security in order to pay for the costs of such completion and related costs, expenses and fees. If the proceeds of the Financial Security paid to the Township, or its order, are not sufficient or unavailable to pay the costs of fully completing all the incomplete Improvements, together with related costs, expenses and fees, the Township, at its option, shall have the right to complete part of the Improvements and to institute appropriate legal and/or equitable actions against Developer to recover monies necessary to complete the remainder of the incomplete Improvements and pay related costs, expenses and fees.

B. In the event that the Township exercises its right, but not obligation, to complete all or part of the incomplete Improvements upon the aforesaid default of Developer, there shall be no requirement for the advertisement of public works or for competitive bidding. Any monies paid to the Township of, from or under the Financial Security and any proceeds resulting from the aforesaid legal and/or equitable actions against Developer shall be not deemed to be public funds for the purpose of any laws relating to public advertising or solicitation of bids. The Township may use any commercially reasonable means to select contractors and/or negotiate prices or costs of material and labor, and Developer hereby ratifies all actions taken by the Township in that regard. The Township shall have the right, but not the obligation, to use its own employees to complete all or part of the Improvements.

5. **Advancement and/or Reimbursement of Expenses.**

A. Developer shall advance and/or reimburse the Township the following:

(1) All reasonable costs, expenses and fees incurred by the Township in and for the preparation, review, and enforcement of this Agreement and the Financial Security Agreement. Such costs, expenses and fees shall include, without limitation: reasonable legal expenses and fees of the Township Solicitor; and reasonable expenses and fees of the Township Engineer, in visiting the site for the purposes of inspection and for the performance of official duties necessarily connected with said inspection purposes.

B. Subject to the dispute provisions of Section 510(g) of the MPC to the extent applicable, the costs, expenses and fees, described in Subsection A above, shall be billed by the Township to Developer, and the amounts of the same shall be due and payable within thirty (30) days of the billing date to the extent that such amounts are not earlier paid to or otherwise recovered by the Township from monies deposited by Developer with and held in escrow by the Township for any such costs, expenses or fees.

C. The Township, under and in accordance with the Financial Security Agreement, shall have the right to recover, from and under the Financial Security, the costs, expenses and fees, described in Subsection A above, notwithstanding that the amount of the Financial Security Agreement, but for this Subsection D, is not now or hereafter specifically established to guarantee or otherwise cover the payment of such costs, expenses and/or fees. Such right shall be in addition to such other or further rights or remedies as may be now or hereafter available to the Township under this Agreement, the Financial Security Agreement, the Subdivision and Land Development Ordinance, and/or the MPC, and/or otherwise at law or in equity.

D. It is expressly acknowledged and agreed that the Township shall not be obligated hereunder or otherwise to finally release Developer from and under the Financial Security, the Financial Security Agreement, or any other financial security provided pursuant hereto, unless and until all the aforesaid costs, expenses and fees are paid in full.

6.

Indemnification.

A. It is understood and agreed that the Township has reviewed the Plans and specifications for the purpose solely of protecting the interests of the public and have not thereby expressly or impliedly warranted the technical suitability of Developer's Plans. Developer warrants that all Plans, designs, installations and specifications have been designed by registered engineers licensed in the Commonwealth of Pennsylvania and will be installed in a good and workmanlike manner and in accordance with the plans and specifications and sound construction practices. Developer does further warrant that the Improvements installed and each and every part thereof are fit for all purposes for which they are intended. The Township disclaims all liability for design, construction, installation or operational defects.

B. Developer hereby agrees to indemnify, save harmless and defend the Township, its officials, officers, employees and agents, of, from, and against any liability, claim, suit or demand, of whatever nature or kind, whether founded or unfounded, arising from, out of, or related to the design, laying out, permitting, installation, construction, completion, inspection, testing, functioning, repair and/or maintenance of (or the failure to repair and/or maintain) the Improvements, together with all cost, fees and expenses (including, but not limited to, attorney's fees and costs, and expert witness fees and costs) as may be incurred by the Township in connection with any such liability, claim, suit or demand, except to the extent caused by the negligence or willful misconduct of the Township.

7. **Notices.**

A. Any notice, demand or other communication required, authorized or permitted to be given under this Agreement shall be sufficient if given in writing and delivered to the party to whom or which the notice or demand is directed at the respective address of the party first above indicated, or to such other address as the party may give by notice complying with the terms of this section.

B. Such notice, demand or other communication shall be delivered to the addressee by one of the following means: (i) personal delivery against receipt; (ii) certified United States mail, postage prepaid, return receipt requested; or (iii) nationally recognized express delivery service, postage or delivery charges prepaid. The notice, demand or other communication

shall be deemed given and effective as follows: (i) if by personal delivery or by express delivery service, at the time of delivery; or (ii) if by mail, three (3) business days after the date of deposit in the United States mails.

8. Miscellaneous.

- A. **Waiver.** Neither the failure nor any delay on the part of the Township to exercise any right, remedy, power, or privilege granted under this Agreement or otherwise provided at law or in equity, shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, remedy, power, or privilege preclude further exercise of the same or of any other such right, remedy, power or privilege; nor shall any waiver of any such right, remedy, power, or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective against the Township unless it is in writing signed by a duly authorized representative of the Township.
- B. **Assignment; Delegation.** Developer shall not assign or delegate any of its rights, powers, privileges, duties, obligations, or liabilities hereunder without the express written consent of the Township, except in conjunction with Developer's transfer of ownership of the Tract as a whole, in which event, the successor in interest shall execute a new Development Agreement and a new Financial Security Agreement or an assignment of this Agreement. Any such assignment or delegation, without such consent, shall be void.
- C. **Cumulative Rights and Remedies.** Any and all rights, powers, privileges and/or remedies granted or accruing to the Township under or pursuant to this Agreement and/or the Financial Security Agreement shall not be exclusive, but shall be cumulative and in addition to such other rights, powers, privileges, and/or remedies as may be now or hereafter available to the Township under the MPC, and/or otherwise at law or in equity.
- D. **Headings.** The captions or headings preceding the text of the several sections and subsections of this Agreement are inserted solely for convenience of reference; they shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.
- E. **Severability.** If any provision on this Agreement is held to be invalid or unenforceable: (i) the remaining provisions of this Agreement shall not be affected thereby, but shall continue in full force and effect; (ii) this Agreement be and is hereby amended, to the minimum necessary, to remedy such invalidity or unenforceability, and the parties hereto shall adjust their respective rights and obligations hereunder accordingly; and (iii) to the extent that such invalid or unenforceable provisions cannot be

rendered valid or enforceable by amendment as aforesaid, the same shall be severed herefrom as though never set forth herein.

F. **Binding Effect.** Subject to Subsection B above, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

G. **Entire Agreement; Amendment.** This Agreement, together with the exhibits attached hereto and made part hereof and the Financial Security Agreement, constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof, and, except as may be otherwise specifically set forth herein, supersedes all prior and contemporaneous agreements and understandings, express or implied, oral or written. Except as may be otherwise specifically provided herein, this Agreement may not be amended, revoked, changed, altered, or modified in any manner whatsoever, other than by written unanimous agreement of and signed by all parties hereto.

H. **Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereunto have executed this Agreement as of the day and year first above written.

57

UPPER UWCHLAN TOWNSHIP

By: _____

Secretary

DEVELOPER
RIP HOLDINGS LLC,
a Pennsylvania limited liability company

Attest: _____

By: _____

Name:

Title:

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
SS.
COUNTY OF CHESTER :

On this _____ day of _____, 20____, before me, a notary public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared _____, who acknowledged himself to be the Chairman of the Board of Supervisors of Upper Uwchlan Township, and that he, as such official, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand an official seal the day and year aforesaid.

Notary Public

My Commission Expires:

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
SS.
COUNTY OF CHESTER :

On this _____ day of _____, 20____, before me, a notary public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be the _____ of RIP HOLDINGS LLC, a Pennsylvania limited liability company, and that he/she, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal the day and year aforesaid.

Notary Public

My Commission Expires:

EXHIBIT "A"**PLAN SHEETS**

Sheet No.	Drawing No.	Title	Date	Last Revised Date
01	C01.1	Cover Sheet	11/9/18	
02	C01.2	Land Development Plan	11/9/18	
03	C02.1	Existing Conditions Plan	11/9/18	
04	C02.2	Site Aerial Plan	11/9/18	
05	C03.1	Grading & Utilities Plan	11/9/18	
06	C03.2	PCSWM Plan	11/9/18	
07	C03.3	PCSWM Details	11/9/18	
08	C04.1	Conservation Plan	11/9/18	
09	C04.2	Conservation Details	11/9/18	
10	C05.1	Construction Details	11/9/18	
11	C05.2	Truck Turning Plan	11/9/18	
12	C06.1	Lighting Plan	11/9/18	
13	C06.2	Light Specifications	11/9/18	
14	C07.1	Landscape Plan	11/9/18	

EXHIBIT "B"**SECURED IMPROVEMENTS**



GILMORE & ASSOCIATES, INC.
ENGINEERING & CONSULTING SERVICES

61

March 5, 2020

File No. 18-07009T

Ms. Shanna Lodge
Acting Upper Uwchlan Township Manager
140 Pottstown Pike
Chester Springs, PA 19425

Reference: Profound Technologies (125 Little Conestoga Road)
Escrow Recommendation
Upper Uwchlan Township, Chester County, PA

Dear Shanna:

Attached please find a spreadsheet which outlines our recommendation for construction escrow. Based on our review, we recommend a suitable form of construction security be established for this project in the amount of **\$210,904.93**

Should you have any questions, please do not hesitate to contact me.

Sincerely,

David N. Leh, P.E.
Municipal Services Manager
Gilmore & Associates, Inc.

Attachment- Escrow Spreadsheet

cc: Kristin Camp, Esq.- BBMM, LLC (Via e-mail only)
Kevin A. Busza, RIP Holdings, LLC (via email only)
Alyson Zarro, Esq. -RRHC (Via e-mail only)
Christopher Daily, PE – DL Howell & Associates, Inc. (Via e-mail only)

BUILDING ON A FOUNDATION OF EXCELLENCE

184 West Main Street | Suite 300 | Trappe, PA 19426
Phone: 610-489-4949 | Fax: 610-489-8447

www.gilmore-assoc.com

ESCROW STATUS REPORT

GILMORE & ASSOCIATES, INC.
184 WEST MAIN STREET
SUITE 300
TRAPE, PA 19426

PROJECT NAME: Profound Technologies (125 Little Conestoga Road)
PROJECT NUMBER: 18-07009T
PROJECT SPONSOR: RIP Holdings, LLC Attn: Kevin Busza
MUNICIPALITY: Upper Uwchlan Township

TOTAL CONSTRUCTION (100%) = \$ 191,731.75
TOWNSHIP SECURITY = \$ 19,173.18
CONSTRUCTION INSPECTION = \$
GRAND TOTAL ESCROWED = \$ 210,904.93

RELEASE NO.: 0
REQUEST DATE:

TOTAL ESCROW REMAINING: \$ 210,904.93
CONSTRUCTION COMPLETION:

ESCROW TABULATION		CONSTRUCTION ITEMS			CURRENT ESCROW RELEASE			ESCROW RELEASED TO DATE			ESCROW REMAINING		
		UNITS	QUANTITY - UNIT PRICE	TOTAL AMOUNT	QUANTITY	TOTAL AMOUNT	INCLUDES CURRENT REQUEST	QUANTITY	TOTAL AMOUNT	QUANTITY	TOTAL AMOUNT	REQUEST DATE	PERCENT COMPLETE
A. EROSION & SEDIMENTATION CONTROLS													
18" Compost Filter Sock	LF	488	\$6.00	\$2,928.00		\$			\$			488	\$ 2,928.00
Orange Construction Fence	LF	376	\$2.00	\$752.00		\$			\$			376	\$ 752.00
Initial Protection	EA	7	\$80.00	\$560.00		\$			\$			560.00	
NAG S-75 Matting	SY	626	\$1.00	\$626.00		\$			\$			626	\$ 626.00
Remove E&S Control	LS	1	\$1200.00	\$1,200.00		\$			\$			1	\$ 1,200.00
Subtotal Item A				\$ 6,066.00		\$			\$				\$ 6,066.00
B. STORM SEWER													
6" HOPE	LF	194	\$27.00	\$5,238.00		\$			\$			194	\$ 5,238.00
8" HOPE	LF	270	\$27.00	\$7,290.00		\$			\$			270	\$ 7,290.00
15" HOPE	LF	327	\$27.00	\$8,639.00		\$			\$			327	\$ 8,639.00
Manhole	EA	1	\$1500.00	\$1,500.00		\$			\$			1	\$ 1,500.00
Type M Inlet	EA	2	\$2,300.00	\$4,600.00		\$			\$			2	\$ 4,600.00
Type C Inlet	EA	2	\$4,400.00	\$8,800.00		\$			\$			2	\$ 8,800.00
Grate Structure	EA	2	\$2600.00	\$5,200.00		\$			\$			2	\$ 5,200.00
Infiltration System	EA	2	\$25,000.00	\$50,000.00		\$			\$			2	\$ 50,000.00
Subtotal Item B				\$ 101,267.00		\$			\$				\$ 101,267.00
C. SIDEWALK/CURBING													
Prepare Subbase for Sidewalk	SF	1315	\$1.25	\$1,643.75		\$			\$			1,315	\$ 1,643.75
4" Thick Concrete Sidewalk	SF	1315	\$4.00	\$5,260.00		\$			\$			1,315	\$ 5,260.00
Curb (Along Roadway)	LF	221	\$15.00	\$3,315.00		\$			\$			221	\$ 3,315.00
Subtotal Item C				\$ 10,218.75		\$			\$				\$ 10,218.75
D. LANDSCAPING & LIGHTING													
Site Lights	EA	7	\$1,000.00	\$7,000.00		\$			\$			7	\$ 7,000.00
Villite Lights (Along Roadway)	EA	3	\$3,500.00	\$10,500.00		\$			\$			3	\$ 10,500.00
Quercus phellos (Deciduous)	EA	10	\$450.00	\$4,500.00		\$			\$			10	\$ 4,500.00
Pantanus x Aceria (Deciduous)	EA	6	\$300.00	\$1,800.00		\$			\$			6	\$ 1,800.00
Nyssa sylvatica (Deciduous)	EA	5	\$350.00	\$1,750.00		\$			\$			5	\$ 1,750.00
Picea omorika (Evergreen)	EA	6	\$400.00	\$2,400.00		\$			\$			6	\$ 2,400.00
Picea abies (Evergreen)	EA	6	\$350.00	\$2,100.00		\$			\$			6	\$ 2,100.00
Pinus sylvestris (Evergreen)	EA	3	\$350.00	\$1,050.00		\$			\$			3	\$ 1,050.00
Ilex glabra (Evergreen)	EA	41	\$60.00	\$2,460.00		\$			\$			41	\$ 2,460.00
Myrica pensylvanica (Evergreen Shrub)	EA	6	\$60.00	\$360.00		\$			\$			6	\$ 360.00
Ilex verticillata (Red Sprite (Deciduous Shrub))	EA	16	\$90.00	\$960.00		\$			\$			16	\$ 960.00
Corinus sibirica (Paulatana? (Deciduous Shrub))	EA	23	\$30.00	\$1,150.00		\$			\$			23	\$ 1,150.00
Lindera benzoin (Deciduous Shrub)	EA	6	\$50.00	\$300.00		\$			\$			6	\$ 300.00
Subtotal Item D				\$ 35,330.00		\$			\$				\$ 35,330.00
E. MISC													
Steps and Handrail	LS	1	\$5,000.00	\$5,000.00		\$			\$			1	\$ 5,000.00
Retaining Wall	SF	750	\$25.00	\$18,750.00		\$			\$			750	\$ 18,750.00
Trash enclosure w/ Grate	LS	1	\$3,000.00	\$3,000.00		\$			\$			1	\$ 3,000.00
Skins	EA	9	\$100.00	\$900.00		\$			\$			9	\$ 900.00
Line Striping/Crosswalk Striping	LS	1	\$5,000.00	\$5,000.00		\$			\$			1	\$ 5,000.00
Concrete Wheel Stops	EA	2	\$100.00	\$200.00		\$			\$			2	\$ 200.00
Permit Gas line around infiltration bed	LS	1	\$5,000.00	\$5,000.00		\$			\$			1	\$ 5,000.00

ESCROW STATUS REPORT																																																																					
<p>GILMORE & ASSOCIATES, INC. 184 WEST MAIN STREET SUITE 300 TRAPPE, PA 19426</p>																																																																					
<p>SUMMARY OF ESCROW ACCOUNT</p>																																																																					
<table border="1"> <thead> <tr> <th colspan="2">TOTAL CONSTRUCTION (100%) =</th> <th colspan="2">\$ 191,731.75</th> </tr> <tr> <th colspan="2">TOWNSHIP SECURITY =</th> <th colspan="2">\$ 19,173.18</th> </tr> <tr> <th colspan="2">CONSTRUCTION INSPECTION \$</th> <th colspan="2"></th> </tr> </thead> <tbody> <tr> <td colspan="2">GRAND TOTAL ESCROWED =</td> <td colspan="2">\$ 210,904.93</td> </tr> <tr> <td colspan="2">RELEASE NO.:</td> <td colspan="2">0</td> </tr> <tr> <td colspan="2">REQUEST DATE:</td> <td colspan="2"></td> </tr> <tr> <td colspan="2">TOTAL ESCROW REMAINING:</td> <td colspan="2">\$ 210,904.93</td> </tr> <tr> <td colspan="2">CONSTRUCTION COMPLETION:</td> <td colspan="2">\$ 210,904.93</td> </tr> </tbody> </table>										TOTAL CONSTRUCTION (100%) =		\$ 191,731.75		TOWNSHIP SECURITY =		\$ 19,173.18		CONSTRUCTION INSPECTION \$				GRAND TOTAL ESCROWED =		\$ 210,904.93		RELEASE NO.:		0		REQUEST DATE:				TOTAL ESCROW REMAINING:		\$ 210,904.93		CONSTRUCTION COMPLETION:		\$ 210,904.93																													
TOTAL CONSTRUCTION (100%) =		\$ 191,731.75																																																																			
TOWNSHIP SECURITY =		\$ 19,173.18																																																																			
CONSTRUCTION INSPECTION \$																																																																					
GRAND TOTAL ESCROWED =		\$ 210,904.93																																																																			
RELEASE NO.:		0																																																																			
REQUEST DATE:																																																																					
TOTAL ESCROW REMAINING:		\$ 210,904.93																																																																			
CONSTRUCTION COMPLETION:		\$ 210,904.93																																																																			
<p>ESCROW TABULATION</p>																																																																					
<table border="1"> <thead> <tr> <th colspan="3">CONSTRUCTION ITEMS</th> <th colspan="3">CURRENT ESCROW RELEASE</th> <th colspan="3">ESCROW RELEASED TO DATE (INCLUDES CURRENT REQUEST)</th> <th>PERCENT COMPLETE</th> </tr> <tr> <th>SUBTOTAL ITEM E</th> <th>UNITS</th> <th>QUANTITY</th> <th>UNIT PRICE</th> <th>TOTAL AMOUNT</th> <th>QUANTITY</th> <th>TOTAL AMOUNT</th> <th>QUANTITY</th> <th>TOTAL AMOUNT</th> <th>PERCENT COMPLETE</th> </tr> </thead> <tbody> <tr> <td>TOTAL IMPROVEMENTS - ITEMS A-E</td> <td></td> <td></td> <td></td> <td>\$31,850.00</td> <td>-</td> <td>\$ -</td> <td>-</td> <td>\$ 31,850.00</td> <td>100%</td> </tr> <tr> <td>F: CONTINGENCY (TOWNSHIP SECURITY) (10%)</td> <td></td> <td></td> <td></td> <td>\$ 191,731.75</td> <td>-</td> <td>\$ -</td> <td>-</td> <td>\$ 191,731.75</td> <td>100%</td> </tr> <tr> <td>NET CONSTRUCTION RELEASE</td> <td></td> <td></td> <td></td> <td>\$ 191,731.75</td> <td>-</td> <td>\$ -</td> <td>-</td> <td>\$ 191,731.75</td> <td>100%</td> </tr> <tr> <td>SURETY AMOUNT</td> <td></td> <td></td> <td></td> <td>\$ 210,904.93</td> <td>-</td> <td>\$ -</td> <td>-</td> <td>\$ 210,904.93</td> <td>100%</td> </tr> </tbody> </table>										CONSTRUCTION ITEMS			CURRENT ESCROW RELEASE			ESCROW RELEASED TO DATE (INCLUDES CURRENT REQUEST)			PERCENT COMPLETE	SUBTOTAL ITEM E	UNITS	QUANTITY	UNIT PRICE	TOTAL AMOUNT	QUANTITY	TOTAL AMOUNT	QUANTITY	TOTAL AMOUNT	PERCENT COMPLETE	TOTAL IMPROVEMENTS - ITEMS A-E				\$31,850.00	-	\$ -	-	\$ 31,850.00	100%	F: CONTINGENCY (TOWNSHIP SECURITY) (10%)				\$ 191,731.75	-	\$ -	-	\$ 191,731.75	100%	NET CONSTRUCTION RELEASE				\$ 191,731.75	-	\$ -	-	\$ 191,731.75	100%	SURETY AMOUNT				\$ 210,904.93	-	\$ -	-	\$ 210,904.93	100%
CONSTRUCTION ITEMS			CURRENT ESCROW RELEASE			ESCROW RELEASED TO DATE (INCLUDES CURRENT REQUEST)			PERCENT COMPLETE																																																												
SUBTOTAL ITEM E	UNITS	QUANTITY	UNIT PRICE	TOTAL AMOUNT	QUANTITY	TOTAL AMOUNT	QUANTITY	TOTAL AMOUNT	PERCENT COMPLETE																																																												
TOTAL IMPROVEMENTS - ITEMS A-E				\$31,850.00	-	\$ -	-	\$ 31,850.00	100%																																																												
F: CONTINGENCY (TOWNSHIP SECURITY) (10%)				\$ 191,731.75	-	\$ -	-	\$ 191,731.75	100%																																																												
NET CONSTRUCTION RELEASE				\$ 191,731.75	-	\$ -	-	\$ 191,731.75	100%																																																												
SURETY AMOUNT				\$ 210,904.93	-	\$ -	-	\$ 210,904.93	100%																																																												

FINANCIAL SECURITY AGREEMENT

64

PROFOUND TECHNOLOGIES – 125 LITTLE CONESTOGA ROAD

THIS FINANCIAL SECURITY AGREEMENT (together with all modifications and amendments, the “Agreement”) made this _____ day of _____, 20____ by **UPPER UWCHLAN TOWNSHIP**, Chester County, Pennsylvania, a second class Township, with offices at 140 Pottstown Pike, Chester Springs, Pennsylvania 19425 (the “Township”) and RIP HOLDINGS LLC, a Pennsylvania limited liability company with an address of 125 Little Conestoga Road, Chester Springs, Pennsylvania 19425 (“Developer”).

BACKGROUND:

A. Developer proposes to develop a 1.184 acre piece of property, known as Chester County Tax Parcel No. 32-4-38.3 situate at 125 Little Conestoga Road, Upper Uwchlan Township, Chester County, Pennsylvania, in accordance with a proposed land development known as “125 Little Conestoga Road” (“Development”).

B. The Upper Uwchlan Township Board of Supervisors (the “Board”) granted final land development approval of the Development on November 18,, 2019. Developer received final approval of the land development plans for the Development, subject to, among other things entering into this Agreement and the Development Agreement, as hereinafter defined, and posting the Financial Security, as hereinafter defined, to complete the Secured Improvements, as hereinafter defined.

C. In the Development Agreement, as hereinafter defined, Developer agreed to construct or install the Secured Improvements, as hereinafter defined, and to post Financial Security to guarantee to the Township that the Secured Improvements will be constructed or installed by the date provided for in this Agreement.

D. The parties desire to set forth their agreement and understanding with respect to the said Financial Security and such other matters as hereinbelow set forth.

NOW, THEREFORE, the parties hereunto, in consideration of the premises and the mutual promises herein contained and intending to be legally bound hereby, agree as follows:

1. **Definitions; Interpretation.**

A. For purposes of this Agreement, except where the context clearly indicates otherwise, the following words and phrases (including the singular and plural forms thereof) shall have the following meanings:

(1) “Township Engineer” shall mean the professional engineer, licensed as such in the Commonwealth of Pennsylvania, duly appointed and employed as the engineer for the Township or engaged by the Township as a consultant thereto.

(2) "Tract" shall mean all that certain 1.184 acre tract of property which is situate at 125 Little Conestoga Road in the Township, Chester County, Pennsylvania, and which is more fully and further shown and described on the Plans.

(3) "Plans" shall mean that certain final subdivision and/or land development plan set entitled "Preliminary/Final Land Development Plan for 125 Little Conestoga Road prepared by D. L. Howell & Associates, Inc., dated November 9, 2018, last revised _____, 2020, consisting of fourteen (14) sheets, as more particularly described in the Development Agreement.

(4) "Subject Land Development" shall mean the proposed land development of the Tract as an addition to the existing building together with such other improvements proposed or required in, on and/or related to the proposed land development, as the same are more fully and further shown and depicted on and by the Plans.

(5) "Improvements" shall mean the Improvements that are to be located on the Tract as depicted on the Plans.

(6) "Secured Improvements" shall mean all those certain Improvements for which the Financial Security is provided or to which the Financial Security otherwise relates. A list of the Secured Improvements is attached here to as Exhibit "A".

(7) "Completion Date" shall mean the date specified in Section 2.D of the Development Agreement on or before which the Improvements shall be completed.

(8) "Financial Security" shall mean the Financial Security provided under and in accordance with the provisions of Section 2 and other provisions of this Agreement.

(9) "Financial Institution" shall mean the bonding company chosen by Developer with which the Financial Security has been posted or established and/or which issues the Financial Security to the Township. The Financial Institution must be a bonding company which is authorized to conduct business in the Commonwealth.

(10) "MPC" shall mean the Pennsylvania Municipalities Planning Code, Act No. 247 of 1968, *as reenacted and amended*, 53 P.S. § 10101 *et seq.*, as the same now exists and hereafter may be further amended.

(11) "Development Agreement" shall mean the Land Development Agreement entered into by Developer and the Township with respect to the development of the Subject Land Development which is dated on or about the date hereof.

B. Except as may be otherwise provided herein and/or if the context clearly indicates otherwise, all words and phrases appearing in this Agreement which also appear in the MPC shall have the meanings and shall be interpreted herein as under the MPC.

2. Financial Security.

A. Developer, in accordance with and pursuant to the terms of this Agreement and at its sole cost and expense, shall establish and maintain Financial Security in accordance with the one of the following which is checked:

A restrictive loan account or cash escrow account (either such account being hereinafter described as an "Escrow Account") with Financial Institution as escrow holder under and in accordance with the terms and conditions of this Agreement;

An irrevocable, Standby Commercial Letter of Credit, issued by Financial Institution in favor of the Township as beneficiary, in form and content satisfactory to the Township Solicitor and appended hereto as Exhibit "B" (the "Letter of Credit");

An unconditional surety bond, issued by Financial Institution as surety to Developer, in form and content satisfactory to the Township Solicitor.

B. The Financial Security shall be established by Developer upon Developer's execution of this Agreement. The Financial Security shall provide for and secure to the public, as represented by the Township, the completion, on or before the Completion Date, of the Secured Improvements.

C. The initial amount of the Financial Security shall be Two Hundred Ten Thousand Nine Hundred Four and 93/100 Dollars (\$210,904.93), which amount is 110% of the total of the estimated costs of completing the Secured Improvements.

D. In addition to the Financial Security being posted to guarantee completion of the Secured Improvements, before construction of the Improvements may begin, Developer shall deposit with the Township a sum of money equal to Nine Thousand Five Hundred Eighty Seven and 00/100 Dollars (\$9,587.00) which sum represents 5% of the estimated cost of construction of the Secured Improvements (the "Inspection Escrow"). The Inspection Escrow shall be held in a non-interest bearing escrow account and shall be used by the Township to pay the costs of its professional consultants and engineer's inspection of the Secured Improvements (the "Inspection Fees"). The Township shall pay the Inspection Fees from the Inspection Escrow. Developer shall be required to replenish the Inspection Escrow such that there is a minimum of 1% of the estimated cost of construction of the Secured Improvements on deposit. The Inspection Escrow shall be used by the Township solely to pay invoices for Inspection Fees. The Township shall provide a copy of all invoices for the Inspection Fees to the Developer.

E. A notation shall appear on the records of the Financial Institution providing that, except as provided in and by this Agreement or as may be otherwise consented to and approved and directed in and by a writing signed by the Township, (i) no withdrawals shall be made from the Financial Security, (ii) the Financial Security shall not be terminated or closed or expire, and (iii) any balance of funds in the Financial Security shall be fully available to the Township for use under and for purposes of this Agreement.

3. Adjustments to Financial Security.

A. Developer agrees that the total amount of the Financial Security and the amount of each of the specific items thereof shall be subject to increase or other adjustment as permitted by and in accordance with the provisions of Section 509 of the MPC. Without limiting the generality of the foregoing:

Developer agrees that, if the Secured Improvements, or any part thereof, are not completed within one (1) year after the date of this Agreement and the Township has agreed to extend the time for completion beyond the Completion Date as may be necessary for the completion, Developer shall post additional Financial Security in accordance with the provisions of the MPC; and Developer shall continue to provide such additional Financial Security on each one (1)-year anniversary date of this Agreement thereafter if the Secured Improvements, or any part thereof, are not completed and Township has agreed to further extend the time for completion beyond the Completion Date, as the same may have been previously extended.

B. Notice of any such additional Financial Security or of any such increase or other adjustment in the amount of the Financial Security, or any part thereof, shall be given in writing by the Township to Developer, and Developer shall post the amount of the additional Financial Security, increase or other adjustment within thirty (30) days of the date of such notice.

C. Any funds posted or provided under this Section 3 as additional Financial Security or as increases or other adjustments to the Financial Security shall become part of the Financial Security and fully subject to the terms and conditions of this Agreement.

4. Interim Releases of Funds.

A. As the work of the construction of the Secured Improvements satisfactorily proceeds, the Township, from time to time upon written request of Developer prior to final release under Section 7 below, shall authorize the release of funds from the Financial Security in accordance with the provisions of the MPC, in such amounts as directed by the Township in writing, but only by and upon the issuance to and receipt by the Financial Institution of a duly executed Certificate of Completion signed by the Township Engineer, the Chairperson of the Board of Supervisors or the Township Manager. The Certificate of Completion shall be in the form substantially as set forth in Exhibit "B" attached to and made fully part of this Financial Security Agreement.

B. Unless the Township expressly and affirmatively directs otherwise in and by the said duly executed Certificate of Completion, the following shall apply to every release of funds from the Financial Security requested under this Section 4: (i) Ten Percent (10%) of the amount of the funds requested for release shall be retained and not released; and (ii) in no event shall the balance of the Financial Security be reduced below One Hundred Ten percent (110%) of the estimated costs of completing the remaining uncompleted Secured Improvements, as such estimated costs of completion shall be determined or approved by the Township Engineer.

5. Default.

A. If any of the Secured Improvements have not been completed as depicted on the Plans, the Township shall have the right to demand and collect payment from the Financial

Institution of the full undrawn amount, after reductions and interim releases, if any, pursuant to this Agreement, of the Financial Security, or any part or lesser amount thereof which the Township in its sole discretion deems necessary to cure any such default as well as to pay for any professional services related to such cure. The following shall apply to such demand and payment:

(1) Developer hereby authorizes the Financial Institution upon such default, without further inquiry being made, to make said payment directly and immediately to the Township or its order, and no further authorization, consent and/or approval of or by Developer to or of said payment shall be required.

(2) The Township may draw amounts from and under the Financial Security prior to the performance of any work by or for the Township in order to complete the Secured Improvements or otherwise cure the default, and/or to pay professional services related thereto, based upon (i) estimates received by the Township for the completion, and/or (ii) bills received by the Township for the professional services.

(3) Developer agrees that it shall have no right or standing to prevent or delay any such payment to and/or collection by the Township.

(4) Developer hereby remises, releases and forever discharges Financial Institution from any and all liability with respect to honoring any such draws by the Township.

(5) In the event of a dispute between Developer and the Township, Developer nevertheless agrees that the provisions of Subsection (1) above shall continue to apply, and that the provisions of Subsection (1) shall not be satisfied by the Financial Institution's payment into court of the amount demanded by the Township but shall be satisfied only by the Financial Institution's payment of the demanded amount directly and immediately to the Township.

(6) The right of the Township to demand payment and collect less than the full undrawn amount of the Financial Security shall not be exhausted by a single exercise thereof, but may be exercised by the Township from time to time and at any time without limitation on the number of exercises thereof until the amount of the Financial Security has been fully drawn.

(7) If the reasonable costs, expenses and fees, incurred by the Township on account of (i) the foregoing completion of Secured Improvements or otherwise curing the default of Developer and (ii) the professional services related thereto, exceed the amount, if any, received by the Township from and under the Financial Security, Developer, in addition to such other and further obligations and liabilities imposed upon it under this Agreement and otherwise by law, shall be liable to the Township for such excess of such costs, expenses and fees. Developer hereby agrees to pay the full amount of such excess to the Township immediately upon demand.

(8) Except in the event of an emergency or other threat to public health and safety, prior to exercising the remedies available to the Township in the event of default, the

Township shall give thirty (30) days advance notice of default to Developer and Financial Institution and Developer and Financial Institution shall have the right to cure such default within the said thirty (30) day period, provided, however, it is acknowledged by the Township and Developer that the Financial Institution has no obligation to cure any event of default under this Agreement.

6. Costs, Expenses and Fees.

A. If Developer fails to advance or reimburse the Township any costs, expenses or fees in accordance with and pursuant to Section 7 of the Development Agreement, Developer shall be in default of this Agreement, and the Township shall be authorized to collect the amount thereof from and under the Financial Security (notwithstanding that the amount of the Financial Security, but for this Subsection A, is not now or hereafter specifically established to guarantee, secure or otherwise cover the payment of such costs, expenses or fees) in same manner and to the same extent as a default made and provided for under Section 5 of this Agreement.

B. Developer shall provide additional Financial Security, in a form acceptable to the Township and in the amount by which the Financial Security was reduced by any payment made to the Township from the Financial Security under provisions of Subsection A above, within fifteen (15) days after written notice of such reduction in the amount of the Financial Security is sent by the Township to Developer. Developer shall also provide the Township, within such fifteen (15)-day period, written proof of such additional Financial Security. The failure of Developer to provide the Township such additional Financial Security and written proof thereof within such time shall constitute a default or breach under this Agreement, and Developer shall be subject to the provisions governing its default or breach, as set forth in both this Agreement and the Development Agreement and/or as otherwise provided by law, until the default or breach is properly and fully cured. The additional Financial Security shall be and constitute Financial Security fully subject to the terms and conditions of this Agreement.

7. Final Release of Financial Security; Termination of Agreement.

A. After all of the Secured Improvements have been completed in accordance with the Development Agreement, and after all of the provisions of the Development Agreement and this Agreement have been satisfied by Developer (including the payment of all reasonable costs, expenses and fees for which Developer is responsible under both said agreements) the Township shall authorize the Financial Institution in writing to release the balance of the Financial Security. Such release authorized by the Township shall be the final release of funds from the Financial Security, and shall further release Developer and the Financial Institution from and under the Financial Security and this Agreement.

B. At and upon the aforesaid Township-authorized release of the balance of the Financial Security, this Agreement shall terminate without further action of the parties being required and neither Developer nor the Financial Institution shall have any further liability under this Agreement.

70

8. Validity and Enforceability of Financial Security.

A. The Financial Security shall be valid, and shall be maintained by Developer valid and in full force and effect at all times following the establishment thereof in accordance with and during continuance of this Agreement.

B. During the continuance of this Agreement, Developer shall, as may be requested by written notice from the Township from time to time or at any time, provide verification and proof to the Township concerning the existence, validity and enforceability of the Financial Security. The verification and proof shall be satisfactory to the Township.

C. Developer agrees and hereby authorizes the Financial Institution, during the continuance of this Agreement, to release to the Township any information as may be requested from time to time or at any time by the Township concerning the financial affairs of Developer relative to this Agreement and the Financial Security.

D. If the Township determines that, upon the information provided or not provided pursuant to Subsections B and/or C above, the Financial Security requirements of this Agreement are not satisfied, or, if Developer otherwise fails to provide and maintain the Financial Security under and in accordance with this Agreement, the Township shall give Developer written notice to provide the required Financial Security within thirty (30) days of the date of the notice.

E. Developer agrees that any and all notices from the Township to the Financial Institution demanding payment of, from and under the Financial Security shall be valid and enforceable, and shall be honored by the Financial Institution if given to the Financial Institution during the continuance of this Agreement.

9. Financial Institution Non-Responsibility.

A. Developer agrees that Financial Institution shall have no duty to inquire as to the truthfulness, acceptability, due execution, due authorization or validity of any document, certificate, statement or notice which purports to have been executed by an official or other representative of the Township.

B. Developer and the Township further agree that Financial Institution shall not have any duty or responsibility with respect to the Financial Security other than to comply with the terms of this Agreement that apply to the actions which the Financial Institution is to take or not take with respect to the Financial Security.

C. Developer and Financial Institution further agree that the obligations of the Financial Institution under this Agreement, and under and with respect the Financial Security, are for the sole benefit of the Township, and shall not be affected, in any way, by any default, action or omission of Developer.

D. The Township and Developer further agree and acknowledge that the Financial Institution assumes no liability for the design, layout, construction, installation,

71

maintenance and/or upkeep of the Improvements or the obligations of the Developer under this Agreement or the Development Agreement.

10. Charges of Financial Institution.

Any and all charges made by the Financial Institution for the establishment, creation, administration or termination of the Financial Security and/or for all other actions of the Financial Institution under, pursuant and/or related to this Agreement are the sole responsibility of Developer and shall be billed to and paid directly by Developer, and no amount of, from or under the Financial Security may be used by or paid to the Financial Institution for such charges. Developer agrees that the Township shall not be liable or otherwise obligated for any of such charges, and Developer hereby agrees to indemnify, protect and defend the Township from and against any such charges.

11. Interest.

If any interest accrues on account of the Financial Security, such interest shall merge with and become part of the funds represented by the Financial Security and shall be treated as an integral part thereof and applied in accordance with the terms of this Agreement. All such interest shall be reported under and to the taxpayer identification number of Developer, and Developer shall be liable for the payment of any income taxes as may be imposed and due on such interest.

12. Insolvency of Developer.

Developer acknowledges, covenants and agrees that, in case of any bankruptcy, receivership, or voluntary or involuntary assignment for the benefit of creditors by or of Developer, the Financial Security and all interest of Developer in, to or under this Agreement are not and shall not be considered part of the estate of Developer.

13. Payments, Reductions or Releases of Financial Security.

It is expressly and specifically understood, covenanted and agreed by Developer and Financial Institution that no payment, reduction and/or release whatsoever shall be made at any time of, from or under the Financial Security without the express written consent and instructions of the Township in accordance with the terms of this Agreement, and that Developer shall maintain the Financial Security at all times during the continuance of this Agreement in the amounts required herein, less all sums drawn or released therefrom by the Township in accordance with the terms hereof. Any violation of Developer's obligations under this Section shall render Developer liable for all damages to the Township, including, without limitation, all reasonable costs, fees and expenses (including, but not limited to, attorney's fees and costs), which the Township is required to pay in order to cure any default or breach by Developer under this Agreement because the Financial Security is not maintained and/or funds thereunder are not available or paid upon demand to the Township in order to cure such default or breach. Any violation of the Financial Institution's obligations under this Section shall render the Financial Institution liable for all damages to the Township, including, without limitation, all reasonable

costs, fees and expenses (including, but not limited to, attorney's fees and costs), which the Township is required to pay in order to cure any default or breach by the Financial Institution for releasing or reducing the Financial Security except in accordance with the terms of this Agreement.

14. Notices.

Except as may be otherwise specifically provided in this Financial Security Agreement:

(1) Any notice, demand or other communication required, authorized or permitted to be given under this Agreement shall be sufficient if given in writing and delivered to the party to whom or which the notice or demand is directed at the respective address of the party first above indicated, or to such other address as the party may give by notice complying with the terms of this section.

(2) Such notice, demand or other communication shall be delivered to the addressee by one of the following means: (i) personal delivery against receipt; (ii) certified United States mail, postage prepaid, return receipt requested; or (iii) nationally recognized express delivery service, delivery charges prepaid. The notice, demand or other communication shall be deemed given and effective as follows: (i) if by personal delivery or by express delivery service, at the time of delivery; or (ii) if by mail, 3 business days after the date of deposit in the United States mails.

15. Miscellaneous.

A. **Waiver.** Neither the failure nor any delay on the part of the Township to exercise any right, remedy, power, or privilege granted under this Agreement or otherwise provided at law or in equity, shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, remedy, power, or privilege preclude further exercise of the same or of any other such right, remedy, power or privilege; nor shall any waiver of any such right, remedy, power, or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective against the Township unless it is in writing signed by a duly authorized representative of the Township.

B. **Assignment; Delegation.** Developer shall not assign or delegate any of its rights, powers, privileges, duties, obligations, or liabilities hereunder without the express written consent of the Township. Any such assignment or delegation, without such consent, shall be void.

C. **Cumulative Rights and Remedies.** Any and all rights, powers, privileges and/or remedies granted or accruing to the Township under or pursuant to this Agreement shall not be exclusive, but shall be cumulative and in addition to such other rights, powers, privileges, and/or remedies as may be now or hereafter available to the Township at law or in equity.

D. **Headings.** The captions or headings preceding the text of the several sections, subsections, paragraphs and other parts of this Agreement are inserted solely for convenience of reference; they shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.

E. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable: (i) the remaining provisions of this Agreement shall not be affected thereby, but shall continue in full force and effect; (ii) this Agreement be and is hereby amended, to the minimum necessary, to remedy such invalidity or unenforceability, and the parties hereto shall adjust their respective rights and obligations hereunder accordingly; and (iii) to the extent that such invalid or unenforceable provisions cannot be rendered valid or enforceable by amendment as aforesaid, the same shall be severed herefrom as though never set forth herein.

F. **Binding Effect.** Subject to Subsection B above, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

G. **Entire Agreement; Amendment.** This Agreement, together with the exhibits attached hereto and made part hereof and the Development Agreement, constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof, and, except as may be otherwise specifically set forth herein, supersedes all prior and contemporaneous agreements and understandings, express or implied, oral or written. Except as may be otherwise specifically provided herein, this Agreement may not be amended, revoked, changed, altered, or modified in any manner whatsoever, other than by written unanimous agreement of and signed by all parties hereto.

H. **Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereunto have executed this Agreement as of the day and year first above written.

74

UPPER UWCHLAN TOWNSHIP

Attest:

Gwen Jonik, Secretary

By: _____
Sandra D'Amico, Chairperson

DEVELOPER
RIP HOLDINGS LLC,
a Pennsylvania limited liability company

Attest:

By: _____
Name:
Title:

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
:SS.
COUNTY OF CHESTER :

On this _____ day of _____, 2020, before me, a notary public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared Sandra D'Amico, who acknowledged herself to be the Chairman of the Board of Supervisors of Upper Uwchlan Township, and that she, as such official, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand an official seal the day and year aforesaid.

Notary Public

My Commission Expires:

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
:SS.

COUNTY OF CHESTER :

On this _____ day of _____, 2020, before me, a notary public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be the RIP HOLDINGS LLC, a Pennsylvania limited liability company, and that he/she, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal the day and year aforesaid.

Notary Public

My Commission Expires:

EXHIBIT "A"

List of Secured Improvements



GILMORE & ASSOCIATES, INC.

ENGINEERING & CONSULTING SERVICES

78

March 5, 2020

File No. 18-07009T

Ms. Shanna Lodge
Acting Upper Uwchlan Township Manager
140 Pottstown Pike
Chester Springs, PA 19425

Reference: Profound Technologies (125 Little Conestoga Road)
Escrow Recommendation
Upper Uwchlan Township, Chester County, PA

Dear Shanna:

Attached please find a spreadsheet which outlines our recommendation for construction escrow. Based on our review, we recommend a suitable form of construction security be established for this project in the amount of **\$210,904.93**

Should you have any questions, please do not hesitate to contact me.

Sincerely,

David N. Leh, P.E.
Municipal Services Manager
Gilmore & Associates, Inc.

Attachment- Escrow Spreadsheet

cc: Kristin Camp, Esq.- BBMM, LLC (Via e-mail only)
Kevin A. Busza, RIP Holdings, LLC (via email only)
Alyson Zarro, Esq. -RRHC (Via e-mail only)
Christopher Daily, PE – DL Howell & Associates, Inc. (Via e-mail only)

BUILDING ON A FOUNDATION OF EXCELLENCE

184 West Main Street | Suite 300 | Trappe, PA 19426
Phone: 610-489-4949 | Fax: 610-489-8447

www.gilmore-assoc.com

ESCROW STATUS REPORT

SUMMARY OF ESCROW ACCOUNT									
			CURRENT ESCROW RELEASE			ESCROW REMAINING			PERCENT COMPLETE
			RELEASED TO DATE (INCLUDES CURRENT REQUEST)			AFTER CURRENT REQUEST			PERCENT COMPLETE
ITEM	DESCRIPTION	UNITS	QUANTITY	UNIT PRICE	TOTAL AMOUNT	QUANTITY	TOTAL AMOUNT	QUANTITY	PERCENT COMPLETE
A. EROSION & SEDIMENTATION CONTROLS									
18' Compost Filter Sock	LF	483	\$6.00	\$2,988.00	\$	-	\$	-	48.8%
Orange Construction Fence	LF	376	\$2.00	\$752.00	\$	-	\$	-	37.6%
Inter Protection	7	\$10.00	\$	\$70.00	\$	-	\$	-	7.0%
NAG S-75 Matting	SY	626	\$1.00	\$626.00	\$	-	\$	-	62.6%
Remove EAS Control	LS	1	\$120.00	\$120.00	\$	-	\$	-	1.20%
SUBTOTAL ITEM A					\$ 6,056.00	\$	-	\$	6.056.00
B. STORM SEWER									
6" HDPE	LF	194	\$27.00	\$5,228.00	\$	-	\$	-	19.4%
8" HDPE	LF	270	\$27.00	\$7,290.00	\$	-	\$	-	27.0%
15" HDPE	LF	327	\$27.00	\$18,639.00	\$	-	\$	-	32.7%
Manhole	1	\$150.00	\$	\$150.00	\$	-	\$	-	1.50%
Type M Inlet	EA	2	\$2,300.00	\$4,600.00	\$	-	\$	-	4.60%
Down Chute	EA	2	\$4,400.00	\$8,800.00	\$	-	\$	-	2.0%
Outlet Structure	EA	2	\$2,600.00	\$5,200.00	\$	-	\$	-	2.0%
Infiltration System	EA	2	\$25,000.00	\$50,000.00	\$	-	\$	-	50.00%
SUBTOTAL ITEM B					\$ 101,257.00	\$	-	\$	101.257.00
C. SIDEWALK/CURBING									
Prepare Subbase for Sidewalk	SF	1315	\$1.25	\$1,643.75	\$	-	\$	-	1.643.75%
4" Thick Concrete Sidewalk	SF	1315	\$4.00	\$5,260.00	\$	-	\$	-	5.260.00%
Curb (Along Roadway)	LF	221	\$15.00	\$3,315.00	\$	-	\$	-	3.315.00%
SUBTOTAL ITEM C					\$ 10,218.75	\$	-	\$	10.218.75%
D. LANDSCAPING & LIGHTING									
Site Lights	EA	7	\$1,000.00	\$7,000.00	\$	-	\$	-	7.000.00%
Village Lights (Along Roadway)	EA	3	\$3,500.00	\$10,500.00	\$	-	\$	-	10.500.00%
Quercus phellos (Deciduous)	EA	10	\$450.00	\$4,500.00	\$	-	\$	-	4,500.00%
Pantanus x Atemoia (Deciduous)	EA	6	\$300.00	\$1,800.00	\$	-	\$	-	1,800.00%
Nursa sanguinea (Deciduous)	EA	5	\$350.00	\$1,750.00	\$	-	\$	-	1,750.00%
Picea americana (Evergreen)	EA	6	\$400.00	\$2,400.00	\$	-	\$	-	2,400.00%
Picea abies (Evergreen)	EA	6	\$300.00	\$2,100.00	\$	-	\$	-	2,100.00%
Picea glauca (Evergreen)	EA	3	\$3,000.00	\$9,000.00	\$	-	\$	-	9,000.00%
Ilex glabra Compacta (Evergreen Shrub)	EA	41	\$600.00	\$2,460.00	\$	-	\$	-	2,460.00%
Myrica pensylvanica (Evergreen Shrub)	EA	6	\$600.00	\$360.00	\$	-	\$	-	360.00%
Ilex verticillata 'Red Sprite' (Deciduous Shrub)	EA	16	\$600.00	\$960.00	\$	-	\$	-	960.00%
Cornus sericea 'Flaviramea' (Deciduous Shrub)	EA	23	\$100.00	\$1,150.00	\$	-	\$	-	1,150.00%
Lindera benzoin (Deciduous Shrub)	EA	6	\$50.00	\$300.00	\$	-	\$	-	300.00%
SUBTOTAL ITEM D					\$ 36,390.00	\$	-	\$	36.390.00
E. MISC									
Steps and Handrail	LS	1	\$5,000.00	\$5,000.00	\$	-	\$	-	5.000.00%
Retaining Wall	SF	750	\$25.00	\$18,750.00	\$	-	\$	-	18,750.00%
Trash Enclosure w/ Grate	LS	1	\$3,000.00	\$3,000.00	\$	-	\$	-	3,000.00%
Suns	EA	9	\$100.00	\$900.00	\$	-	\$	-	900.00%
Line Stripping/Crosswalk Striping	LS	1	\$5,000.00	\$5,000.00	\$	-	\$	-	5,000.00%
Concrete Wheel Stops	EA	2	\$100.00	\$200.00	\$	-	\$	-	200.00%
Retroue (line around infiltration bed)	LS	1	\$5,000.00	\$5,000.00	\$	-	\$	-	5,000.00%

TOTAL ESCROW REMAINING: \$ 210,904.93
CONSTRUCTION COMPLETION: 210,904.93

PROJECT NAME: Profound Technologies (125 Little Conestoga Road)

PROJECT NUMBER: 18-070907

PROJECT SPONSOR: RIP Holdings, LLC Attn: Kevin Busza
MUNICIPALITY: Upper Uwachian TownshipRELEASE NO.: 0
REQUEST DATE:

ESCROW STATUS REPORT									
SUMMARY OF ESCROW ACCOUNT									
PROJECT NAME:	Profound Technologies (125 Little Contestoga Road)	TOTAL CONSTRUCTION (100%) =	\$ 191,731.75						
PROJECT NUMBER:	18-07009T	TOWNSHIP SECURITY =	\$ 19,173.18						
PROJECT SPONSOR:	RIP Holdings, LLC Attn: Kevin Busza	CONSTRUCTION INSPECTION	\$						
MUNICIPALITY:	Upper Uwchlan Township	GRAND TOTAL ESCROWED =	\$ 210,904.93						
		RELEASE NO:	0						
		REQUEST DATE:							
		TOTAL ESCROW REMAINING:	\$ 210,904.93						
		CONSTRUCTION COMPLETION:							
ESCROW TABULATION									
CONSTRUCTION ITEMS									
ITEM	UNITS	QUANTITY	UNIT PRICE	TOTAL PRICE	CURRENT ESCROW RELEASE	RELEASED TO DATE (INCLUDES CURRENT REQUEST)	ESCROW REMAINING (AFTER CURRENT REQUEST)	PERCENT COMPLETE	PERCENT COMPLETE
SUBTOTAL				\$27,450.00	\$	\$	\$	37,450.00	
TOTAL IMPROVEMENTS - ITEMS A-E				\$	191,731.75	\$	\$		\$ 191,731.75
F. CONTINGENCY (TOWNSHIP SECURITY) (10%)				\$	19,173.18	\$	\$		\$ 19,173.18
NET CONSTRUCTION RELEASE				\$		\$	\$		\$ 210,904.93
SURETY AMOUNT				\$	210,904.93	\$	\$		\$ 210,904.93

EXHIBIT "B"

**CERTIFICATE OF COMPLETION AND
AUTHORIZATION OF REDUCTION AND RELEASE
NO. _____**

81

WE, THE UNDERSIGNED, HEREBY:

A. CERTIFY that the work and Improvements, described hereinbelow, completion of which is provided under and by that certain Financial Security Agreement between Upper Uwchlan Township ("Township") and RIP HOLDINGS LLC, ("Developer"), dated _____, 2020, concerning the construction, installation and completion of Improvements in the 125 Little Conestoga Road Land Development have been completed to the extent of the amount indicated in item I below; and

B. AUTHORIZE [Insert Name of Financial Institution], pursuant to the Financial Security Agreement, **TO REDUCE** the Financial Security, in the nature of a letter of credit by the Bank to guaranty, among other things, the completion of said work and Improvements, to the extent of the amount indicated in item III below, and to release said amount of reduction from and under the terms and conditions of the escrow account.

The reduction and release of the amount of the Financial Security hereby authorized shall not be construed, in any manner or extent, as an acceptance by the Township of the work and Improvements described hereinbelow (or of any other work performed or any Improvements installed or constructed), nor shall this Certificate and Authorization constitute any waiver by the Township of its rights to inspect and approve the work and Improvements described hereinbelow (or any other work performed and Improvements installed and constructed). Township hereby reserves the right to re-inspect the work and Improvements (as well as any other work and Improvements) and to require Developer to correct, repair or demolish and to properly reconstruct any and all defective and deficient work and Improvements not accepted and approved by Township.

THE FOLLOWING WORK AND Improvements are the subject of this Certificate and Authorization: (*See attached letter and invoice.*)

THE REDUCTION AND RELEASE of the Financial Security authorized by this Certificate and Authorization have been determined as follows:

I. COST OF COMPLETED WORK AND Improvements	\$ _____
II. <i>less</i> AMOUNT OF RETAINAGE (10%)	\$ _____
III. AMOUNT OF REDUCTION AND RELEASE	\$ _____

Date _____ **Township Engineer**

Date _____ **Chairperson, Board of Supervisors**

Date _____ **Manager**

PREPARED BY AND RETURN TO:
RILEY RIPER HOLLIN & COLAGRECO
Attn: Alyson M. Zarro, Esquire
717 Constitution Drive, Suite 201
P.O. Box 1265
Exton, PA 19341
(610) 458-4400

UPI No. 32-4-38.3

83

STORMWATER BEST MANAGEMENT PRACTICES (BMPs)
AND CONVEYANCES OPERATION AND MAINTENANCE AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 201____, by and between RIP HOLDINGS LLC, a Pennsylvania limited liability company, (hereinafter the "Landowner"), and UPPER UWCHLAN TOWNSHIP, Chester County, Pennsylvania, (hereinafter the "Township").

WITNESSETH

WHEREAS, the Landowner is the owner of certain real property by virtue of a deed of conveyance recorded in the land records of Chester County, Pennsylvania, in Deed Book 9598, Page 1324, and identified as UPI No. 32-4-38.3 (hereinafter "Property"); and

WHEREAS, the Landowner is proceeding to build an addition to the existing building and further develop the Property in accordance with a Preliminary/Final Land Development Plan for 125 Little Conestoga Road prepared by D. L. Howell & Associates, Inc. dated November 9, 2018 and last revised _____, 2020 ("Final Plan"); and

WHEREAS, the Stormwater Best Management Practices (hereinafter "BMP(s)") Operations and Maintenance Plan approved by the Township (hereinafter referred to as the "O&M plan") for the Property, which is part of the Final Plan and which is attached hereto as

Appendix A and made a part hereof, provides for management of stormwater within the confines of the Property through the use of BMP(s) and conveyances; and

WHEREAS, the Township, and the Landowner, for itself and its administrators, executors, successor, heirs, and assigns, agree that the health, safety, and welfare of the residents of the Township and the protection and maintenance of water quality require that stormwater BMP(s) and conveyances be constructed and maintained on the Property; and

WHEREAS, for the purposes of this Agreement, the following definitions shall apply:

- **BMP – "Best Management Practice"** - Those activities, facilities, designs, measures or procedures as specifically identified in the O&M Plan, used to manage stormwater impacts from land development, to meet state water quality requirements, to promote groundwater recharge, and to otherwise meet the purposes of the Township Stormwater Management Ordinance. BMPs may include, but are not limited to, a wide variety of practices and devices, from large-scale retention ponds and constructed wetlands to small-scale underground treatment systems, infiltration facilities, filter strips, low impact design, bioretention, wet ponds, permeable paving, grassed swales, riparian or forested buffers, sand filters, detention basins, manufactured devised, and operational and/or behavior-related practices that attempt to minimize the contact of pollutants with stormwater runoff. The BMPs identified in the O&M Plan are permanent appurtenances to the Property; and
- **Conveyance** – As specifically identified in the O&M Plan, a man-made, existing or proposed facility, structure or channel used for the transportation or transmission of stormwater from one place to another, including pipes, drainage ditches, channels and swales (vegetated and other), gutters, stream channels, and like facilities or features. The conveyances identified in the O&M Plan are permanent appurtenances to the Property; and

WHEREAS, the Township requires, through the implementation of the O&M Plan, that stormwater management BMPs and conveyances, as required by said O&M Plan and the Township's Stormwater Management Ordinance, be constructed and adequately inspected, operated and maintained by the Landowner, its administrators, executors, successors in interest, heirs, and assigns.

NOW, THEREFORE, in consideration of the foregoing promises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto, intending to be legally bound hereby, agree as follows:

1. The foregoing recitals to this Agreement are incorporated as terms of this Agreement as if fully set forth in the body of this Agreement.
2. The Landowner shall construct the BMP(s) and conveyance(s) in accordance with the Final Plan.
3. The Landowner shall inspect, operate and maintain the BMP(s) and conveyance(s) as shown on the O&M Plan in good working order acceptable to the Township and in accordance with the specific inspection and maintenance requirements in the approved O&M Plan.

The Landowner shall, further, provide annual written Inspection and Maintenance Reports for the BMP(s) and conveyance(s) shown on the O&M Plan to the Township.

4. The Landowner hereby grants permission to the Township, its authorized agents and employees, to enter upon the Property from a public right-of-way or roadway, at reasonable times and upon presentation of proper identification, to inspect the BMP(s) and conveyance(s) whenever it deems necessary for compliance with this Agreement, the O&M Plan and the Township's Stormwater Management Ordinance. Whenever possible, the Township shall notify the Landowner prior to entering the Property.
5. The Township intends to inspect the BMP(s) and conveyance(s) at a minimum of once every three (3) years to determine if they continue to function as required.
6. The Landowner acknowledges that, per the Township's Stormwater Ordinance, it is unlawful, without written approval of the Township, to:
 - a. Modify, remove, fill, landscape, alter or impair the effectiveness of any BMP or conveyance that is contrasted as part of the approved O&M Plan;
 - b. Place any structure, fill, landscaping, additional vegetation, yard waste, brush cuttings, or other debris into a BMP or conveyance that would limit or alter the functioning of the BMP or conveyance;

- c. Allow the BMP or conveyance to exist in a condition which does not conform to the approved O&M Plan or this Agreement; and
 - d. Dispose of, discharge, place or otherwise allow pollutants including, but not limited to, deicers, pool additives, household chemicals, and automotive fluids to directly or indirectly enter any BMP or conveyance.
7. In the event that the Landowner fails to operate and maintain the BMP(s) and conveyance(s) as shown on the O&M Plan in good working order acceptable to the Township, the Township shall send written notice to the Landowner specifying the areas of non-compliance and the steps that shall be taken to cure the non-compliance. In the event that the Landowner does not cure the non-compliance within thirty (30) days of the date thereof, or diligently pursue compliance in circumstances where compliance is not possible within thirty (30) days due to weather conditions, or where otherwise determined by the Township in an emergency situation that notice is not practical or expedient, the Landowner shall be in violation of this Agreement, and the Landowner agrees that the Township or its representatives may, in addition to and not in derogation or diminution of any remedies available to it under the Stormwater Ordinance or other statutes, codes, rules or regulations, or this Agreement, enter upon the Property and take whatever action is deemed necessary to maintain said BMP(s) and conveyance(s). It is expressly understood and agreed that the Township is under no obligation to maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the Township.
8. In the event that the Township, pursuant to this Agreement, performs work of any nature or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Landowner shall reimburse the Township for all expenses (direct and indirect) incurred within thirty (30) days of delivery of an invoice from the Township. Failure of the Landowner to make prompt payment to the Township may result in enforcement proceedings, which may include the filing of a lien against the Property, which filing is expressly authorized by the Landowner.

9. The intent and purpose of this Agreement is to ensure the proper maintenance of the on-site BMP(s) and conveyance(s) by the Landowner; provided, however, that this Agreement shall not be deemed to create any additional liability on any party for damage alleged to result from or be caused by stormwater runoff.

10. The Landowner, for itself and its executors, administrators, assigns, heirs, and other successors in interest, hereby releases and shall release the Township's employees, its agents and designated representatives from all damages, accidents, casualties, occurrences, or claims which might arise or be asserted against said employees, agents or representatives arising out of the construction, presence, existence, or maintenance of the BMP(s) and conveyance(s) either by the Landowner or Township. In the event that a claim is asserted or threatened against the Township, its employees, agents or designated representatives, the Township shall notify the Landowner, and the Landowner shall defend, at his own expense, any claim, suit, action or proceeding, or any threatened claim, suit, action or proceeding against the Township, or, at the request of the Township, pay the cost, including attorney's fees, of defense of the same undertaken on behalf of the Township. If any judgment or claims against the Township's employees, agents or designated representatives shall be allowed, the Landowner shall pay all damages, judgments or claims and any costs and expenses incurred by the Township, including attorney's fees, regarding said damages, judgments or claims. The foregoing shall not apply where said claim or judgment results from the negligence or willful misconduct of the Township, its employees, agents or designated representatives.

11. The Township may enforce this Agreement in accordance with its Stormwater Ordinance, at law or in equity, against the Landowner for breach of this Agreement. Remedies may include fines, penalties, damages or such equitable relief as the parties may agree upon or as may be determined by a Court of competent jurisdiction. Recovery by the Township shall include its reasonable attorney's fees and costs incurred in seeking relief under this Agreement.

12. Failure or delay in enforcing any provision of this Agreement shall not constitute a waiver by the Township of its rights of enforcement hereunder.

88

13. The Landowner shall inform future buyers of the Property about the function of, operation, inspection and maintenance requirements of the BMP(s) prior to the purchase of the Property by said future buyer, and upon purchase of the Property the future buyer assumes all responsibilities as Landowner and must comply with all components of this Agreement.
14. This Agreement shall insure to the benefit of and be binding upon, the Township and the Landowner, as well as its assigns and successors in interest.

This Agreement shall be recorded in the Office of the Recorder of Deeds in and for Chester County, Pennsylvania, and shall constitute a covenant running with the Property, until such time that the Township may approve a different development scheme for the Property or different BMPs than those depicted on the O&M Plan. In the event of such approval, an amendment to this Agreement or an extinguishment and termination of this Agreement, as applicable, shall be recorded in the Office of the Chester County Recorder of Deeds.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers and representatives on the date first indicated hereinabove.

80

ATTEST/WITNESS:

LANDOWNER
RIP HOLDINGS LLC,
a Pennsylvania limited liability company

BY: _____

ATTEST:

BOARD OF SUPERVISORS OF
UPPER UWCHLAN TOWNSHIP

BY: _____

Sandra D'Amico, Chairperson

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF _____ : ss
: _____

90

On this, the _____ day of _____, 2020, before me, a Notary Public, the undersigned officer, personally appeared, _____, who acknowledged himself to be the _____ of **RIP HOLDINGS LLC**, a Pennsylvania limited liability company, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

(Notarial Seal)

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF CHESTER : ss
: :

91

On this, the _____ day of _____, 2020, before me, a Notary Public, the undersigned officer, personally appeared, Sandra D'Amico, who acknowledged herself to be the Chairperson of the Board of Supervisors of **UPPER UWCHLAN TOWNSHIP**, and that she as such Chairperson, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the Township by herself as Chairperson.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

(Notarial Seal)

My Commission Expires:

APPENDIX “A”

92



UPPER UWCHLAN TOWNSHIP

MEMORANDUM

93

ADMINISTRATION

TO: BOARD OF SUPERVISORS
 Tony Scheivert, Township Manager
 Shanna Lodge, Assistant Township Manager

FROM: Gwen Jonik, Township Secretary

RE: Zoning Hearing Board Appointment – Lauren Cortesi

DATE: April 8, 2020

The Township Zoning Hearing Board (ZHB) has a full Member vacancy. Lauren Cortesi, who is currently the Alternate Member (appointed July 2018), is interested in filling that vacancy.

If that is the Board of Supervisors' desire, you could appoint Lauren as a full Member of the ZHB at your April 14, 2020 Workshop.

A term on the Zoning Hearing Board is 3 years. Ms. Cortesi was just re-appointed to the ZHB and her term would expire December 31, 2022.

There are 2 residents who've expressed interest in serving on the ZHB. I will coordinate 'interviews' for the Alternate Member vacancy with the ZHB members.